

TRANSCRIPT OF PROCEEDINGS
UNCLASSIFIED

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY, VICTORIA BARRACKS, NSW

INQUIRY INTO THE DEATH OF
PTE JACOB BRUCE KOVCO

PRESIDING:
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COL M CHARLES, Board Member
MR J O'SULLIVAN, Board Member

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LTCOL B GREEN, representing Soldier 14
LTCOL T BERKLEY, representing Next of Kin
LTCOL F HOLLES, representing PTE Kovco's Parents
COL L YOUNG, representing PTE Kovco

1011 THURSDAY 20 JULY 2006
DAY 7

The transcript has been checked and cleared for operational security issues by
LTCOL G Davis

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RESUMED

[1011]

5 COL GRIFFIN: Mr President, Members, unless there are any other matters, I will call the first witness for today.

PRESIDENT: Please do.

10 COL GRIFFIN: Mr Lucas van der Walt.

<LUCAS CORNELIS VAN DER WALT, sworn

[1012]

15 **<EXAMINATION BY COL GRIFFIN**

20 COL GRIFFIN: Mr van der Walt, good morning. What is your full name, please?---Lucas Cornelis van der Walt.

Your occupation?---I am a Scientific Officer attached to the Forensic Ballistics Investigation Section of the New South Wales Police

25 How long have you been in that position?---I've been in that position for approximately five and a half years.

30 How did you come to be involved in the investigation into the death of PTE Jacob Kovco?---During the week of 3 May I was covering call in the State of New South Wales from a ballistics perspective. I was informed that Wednesday by my section leader, Inspector Hoffman, that I might be required to fly out to Baghdad and whether I'm willing to do that.

35 Have you read a document that sets out the rights and obligations of witnesses appearing before Defence Force Boards of Inquiry this morning?---I have.

Do you understand your rights and obligations as a witness?---I do.

40 Did you prepare a report of your activities investigating the circumstances surrounding the death of PTE Kovco?---I did.

I show you a document. Do you recognise that document, Mr van der Walt?---I do.

45 What is it?---This is a certificate dated 31 May 2006 prepared by me in the

matter of PTE Jacob Kovco.

5 Mr President, Members, this document in a copy appears at
Annex BBBB to the SIB report which is Exhibit 49 before you at the
moment. It contains some material that has been classified on operational
security grounds. The document has been, to use that term, “redacted”,
that is, it has been blacked out to remove - and that redacted copy I’ll now
hand to Mr van der Walt. Mr van der Walt, if you compare the two copies
you’ll see that certain aspects of your original report have been blacked
10 out. I’d ask you as you go through the report with me shortly to be
conscious of those matters that have been blacked out and to not state
them on the record as we are in a public open forum at the moment. Do
you understand, sir?---I do understand.

15 Also made available to you on the desk where you are seated is the matrix
of names that has been prepared in respect of individuals who are posted
to the Security Detachment in Baghdad. You’ll see that on that document
next to the name is a number and I’d ask you if you have to refer to any of
those individuals that you do so by reference to the number rather than
20 their identities?---I understand.

Now, Mr van der Walt, I’d like to step you through that certificate that
you’ve prepared, please. I see that you are a scientific officer attached to
the forensic ballistics investigation section of the Forensic Services Group
25 of the New South Wales Police Services. Is that right, sir?---That is
correct.

In that capacity are you a uniformed officer or a civilian employee of the
department?---I am a civilian employee of the department.

30 Would you describe for the Board, please, your technical background and
training?---I joined the South African Police Service forensic ballistic
section in 1993. I was trained in a three-year internal program run by the
South African Police in a certificate relating to ballistics. Now, the field
35 of ballistics is very wide. There’s numerous aspects of the field of
ballistics, but it is in general everything a firearm can do in relation to the
internal ballistics of firearm, which is basically what happens in the inside
of a firearm when a shot is discharged, the identification of the different
components of a cartridge back to that firearm, as well as the intermediate
40 aspects of ballistics which relates to everything going on surrounding that
firearm and its direct environment, the gas, the smoke, et cetera, that gets
deposited on surfaces close to the firearm. Also, we trained in external
ballistics which relates to the flight of the bullet, as well as terminal
ballistics which relates to the effect the bullet has on the target and the
45 target on the bullet. After completing that three-year training successfully,

I also inscribed in a three-year program through the University of South Africa majoring in ballistics. It is called a forensic advanced program in forensic criminology. I also attained numerous - I also attended numerous armourers courses.

5

What is an armourer's course?---An armourer's course would be a manufacturer of a firearm coming out, either we visit them or they visit us, and they train us in their firearm, how they function, how to take them apart, et cetera. I have done armourer's course in Glock self-loading pistols. I have done armourer's courses by the manufacture of Armalite. I have also attended tool mark comparison workshops conducted by NIFS with is the National Institute of Forensic Science. I have a - - -

10

What is a tool mark comparison workshop, what can we understand that to contain?---That basically draws us back to the aspect of ballistics of internal - internal ballistics. When any two hard surfaces come in contact with one another, marks are transferred. So let's take a cartridge and when I speak about a cartridge, this is an unfired cartridge. It's say for instance we loaded that into a firearm, as soon as that is discharged, marks get transferred from several components of that firearm; the firing pin, the extractor, the ejector, also the bullet that's travelling down the barrel takes on the marks of - of that barrel. So marks are transferred from the bullet to the - to the - sorry, from the barrel to the bullet and bullet to the barrel and that is typically workshop called the tool mark comparison criteria workshops.

20

25

Am I correct in saying that into the weapon goes an intact projectile and cartridge case, what a layman would understand as a bullet and it comprises two components at least: the cartridge case and the projectile that is expelled from the weapon, from the muzzle?---That is correct. For the purpose of my testimony I would like to use the right terminology because we do have a bullet and we do have a fired cartridge case. So a cartridge is the bullet and the cartridge case still as it came out of the manufacturing plant. So it's an unfired cartridge and as soon as it is discharged, the fired cartridge case picked up at the scene is a fired cartridge case and the bullet that is removed from either bodies or picked up at the crime scene or a roof, that is what I would be referring to as a bullet.

30

35

Do I understand you to be saying that those two separate components, the bullet and the cartridge case both have characteristics imparted to them by the barrel and the firing pin - well, certainly the cartridge case by the barrel and the firing pin and the projectile by the barrel?---The projectile by the barrel, the cartridge case by several components of the firearm which is located close to the breach and closer to the breach consists of the

40

45

firing pin, extractor, ejector, chamber markings as well as when the -
when the cartridge case is ejected, it makes contact with the ejection port.
So there are more marks to be found on the cartridge case than there
would be on a bullet.

5

Now, I interrupted you at the point where you were detailing your
technical history and training after the attendance at the tool workshops?
---I've also attended numerous autopsies upon wounded person, who have
been fatally wounded by firearms in order - in order to interpret their
wounds. I have tested and examined thousands of firearms and studied
South African small arms, ammunition production methods and the
techniques adopted by police authorities in the field of firearms
identification and identification of ammunition components by
comparative microscopy. I've also undertaken independent proficiency
testing relating to the identification of ammunition components and tool
marks for eye comparative microscopy through the National Institute of
Forensic Science which is located in Australia and Collaborative Testing
Services which is located in Virginia, USA.

20

Now, for those of us who are not familiar with these areas, could you just
describe comparative microscopy please, what is that process?---A
comparison microscope is a microscope that allows us to look at two
objects simultaneously. A comparison microscope basically consists of
two lenses that are connected by an optical bridge and we look through
one eyepiece at the two objects that - on the working stages of this
comparison microscope. Typically one will have an exhibit on the one
working stage and one will have a test fired cartridge case or bullet that
was fired by us at the office on this microscope and we will compare the
marks on the fired cartridge case and bullet to the marks on the test fired
cartridge case or bullet and make a decision whether it was discharged by
the same firearm or not.

25

30

Do I understand you to be saying that your training and experience, as
well as the technical aspects of the theory and of conducting this
laboratory type testing, also includes physical examination of crime scenes
or incident scenes and attendance at autopsies for visual examination of
the results of weapon incidents?---That is correct.

35

How many years have you been doing this, Mr van der Walt?---I've been
doing this for close to 14 years now.

40

Would you now tell us your involvement in this particular incident, by
reference to your report, if that assists?---About 10 am on Wednesday,
3 May, I was informed by Inspector Hoffman, manager of the Forensic
Ballistics Investigation Section, that I might be required to attend

45

5 Baghdad, Iraq, regarding the shooting incident relating to PTE Kovco. I was supplied with photographs and notes taken during the post-mortem of PTE Kovco by Sergeant Snow of the Forensic Ballistics Investigation Section. About 10 am on Tuesday, 9 May 2006, in company with
10 Inspector Hayes, Senior Constable Watson of the State Crime Command, Homicide Section, Sergeant Phil Elliott of Chatswood Crime Scene Section, I attended the Australian Embassy in Baghdad, Iraq. There I had a conversation with CAPT Smith, SGT Hession and CPL White of the Special Investigation Branch of the Australian Army. During this discussion they guided me to the following areas within the Embassy grounds and I saw the following.

15 I've referred you to the redacted sections of that statement. Would you tell us essentially what you observed and what your conclusions were from what you observed?---I was shown numerous areas within the Embassy. I was shown the positions where soldiers render safe their firearms. A number of locations, including positions of different - of PTE Kovco were shown to me of the day of the incident. The Embassy was the accommodation of the soldiers - I withdraw that last sentence, it was
20 just difficult reading that redacted sentence. (*reference to accommodation deleted*). There was a room, room No. 8, was (*deleted*). This was indicated as the room where the incident occurred. A preliminary examination of the room revealed that there was an area of damage to the ceiling of the room consistent with being caused by a fired bullet.

25 Yes, please go on; what did you do?---For the remainder of that day, which was 9 May 2006, I assisted Sergeant Elliott with documenting, measuring, photographing different areas within the perimeter of the Embassy. About 8.30 am on Wednesday, 10 May 2006, in company with
30 Sergeant Elliott, we returned to the soldier accommodation at the Australian Embassy and, in relation to the forensics ballistics aspects, I observed the following. The inside of the room consisted of wood panelling and the exterior of metal sheeting. The ceiling was constructed of chipboard. The ceiling, which was located at approximately 2349 mm
35 above the floor of the room, sustained damage which is consistent with a bullet impacting and then exiting the room, which I previously mentioned in paragraph 5. This area of damage was located approximately 2063 mm north of the southern wall, 620 mm east of the western wall and measured approximately 30 mm by 10 mm. A corresponding area of damage
40 consistent with being caused by a fired bullet was located in the external roof. This area of damage was located approximately 2980 mm north of the southern edge of the roof, approximately 2435 mm east of the western edge of the roof and measured approximately 16 mm long and 9 mm wide. This area of damage is consistent with being caused by a fired
45 bullet partially exiting the roof. The bullet exited the room at an angle of

5 approximately 40 degrees upwards and approximately 14 degrees in a west-north westerly direction. After completion of my examination of the room I removed the section of the ceiling containing the bullet hole. Then in summary, with the ballistic evidence available to me I am of the opinion that the damage is consistent with the impact and passage of a fired bullet discharged from a firearm from inside the room. The bullet path was determined to be upwards and in a west-north westerly direction. The victim was positioned in an area close to the double bunk beds at the time of discharge of the firearm.

10 Could Mr van der Walt be shown Exhibit 76, please. Mr van der Walt, you're going to be shown a diagram of the room.

15 PRESIDENT: Feel free to move about. You can use the microphone? ---Thanks, sir.

20 COL GRIFFIN: You'll also be provided with a laser pointer, should you need to point at anything on the diagram, Mr van der Walt. Do you recognise the diagram?---I do.

Would you tell the Board your knowledge of it, please?---That is a 3-D image that was done by the photogrammetry section of Forensic Services Group of the room, room number 8 described in my certificate, where the incident occurred.

25 Would you tell us about the diagram and your input into the conclusions you draw from the evidence that you observed at the scene?---To start off at the scene I measured the different points of impact that was left. That would be the point of impact to the ceiling.

30 PRESIDENT: The impact on the roof?---That is consistent with being the impact to the ceiling and then this doesn't show the impact to the roof, but that was approximately located a metre above the impact to the ceiling at a degree of 40 degrees.

35 COL GRIFFIN: Mr van der Walt, is there anything significant about the space between those two points of impact, that is, one being the roof and the other one being the ceiling?---Yes, there is. It allows me to come up with a final trajectory the bullet had which is that line that I'm showing right now which is 40 degrees.

40 Was there anything that could have been a supervening event between those two points of impact, that is, anything that could have deflected the round, in your observation?---Initially the bullet could have deflected because it hit the skull and then exited the skull and bullets can deflect

45

from hitting bone. But between the ceiling and the roof when I cut out the section of the ceiling I had a look inside the roof cavity and there was no substance in there that could allow the bullet to deflect. The majority of it was Styrofoam.

5

Does it flow from that that therefore you have two fixed points that are reasonably reliable upon which you can then extrapolate the line that you've drawn?---Yes.

10

Is there anything about the injuries observed to PTE Kovco that is consistent with that line that you based on those two fixed points?---That is so, yes, I can. Although I did not attend the post-mortem, I went through my colleague's notes who did attend the post-mortem. If we assume that, which we can't, PTE Kovco was standing in the manner indicated by this illustration, that he had an approximate angle of 45 degrees between the entry wound to his head and the exit wound to his head, as well as the confirming angle between the ceiling and the roof of 40 degrees.

15

20

Would you describe that as very close approximation for your purposes? ---Yes.

25

If you look at the top left-hand diagram on the plan and indicate with your laser pointer - I take it that you can see there the stylised figure positioned - do you see what I mean?---Yes.

30

Again, is it the case that your assumption of standing upright is consistent with the physical evidence that you observed?---Yes. PTE Kovco could also have been in a kneeling position or even in a higher position, say, for instance, he jumped just before the incident occurred. We have to draw - the head can be positioned anywhere in line with that trajectory that I'm showing now. From the ceiling, which is very high, so logic tells us it was probably not the instance. So basically anything just higher - just a bit higher than his head all the way back to the bunk bed could have been the position of his head at the time of discharge.

35

40

Is it the case that the position of the stylised figure on the diagram, given the evidence that you observed and received, is your best estimation of his position at the time he sustained the injury?---I would not say that is the most likely position. Anywhere, as I've indicated previously, can be the most likely position.

45

If you would refer to the top left-hand diagram again, please. So anywhere along the red line in the top left-hand diagram, either left or right of the figure, could be his position?---That's right.

5 Mr van der Walt, I understand that - and we have in evidence a report of Detective Sergeant Snow, whose certificate appears in the same Military Police report which is Exhibit 49 in these proceedings, that he conducted some tests in respect of the ballistics in terms of the projectile, cartridge case and weapon?---Yes.

Did you have an involvement in that?---I did.

10 Would you tell the Board your involvement, please?---Sergeant Snow asked me to confirm his finding on the comparison microscope regarding the fired bullet and the fired cartridge case. I did that and I found that the fired bullet shown to me and the fired cartridge case was positively discharged by the firearm or the test fires that he showed me and the test
15 fires was discharged by the firearm.

When you say “positively discharged”, if I could turn that around. Is it possible that it was fired by another firearm?---No.

20 No other firearm in the world couldn't produce those characteristics?---No other firearm.

Do you have with you a replica of the type of firearm?---I do not have the replica with me.

25 I'll provide you with something that has been presented to us by Inspector Hayes in that case, but we'll do that after the next available opportunity. Is there anything else that you can say with respect to the positioning of the weapon in the hand relative to that line of trajectory that appears in the
30 imagery?---The position of the firearm had to be in close contact to the entry wound sustained by PTE Kovco.

The angle of the weapon being held in proximity to the head, what can you say about that?---The angle is - is difficult to estimate because we
35 have a moving object, the head which basically can be tilted left, right, front and backwards, so - and if we - if we assume that the bullet did not deflect at all from initially striking bone, then the degree - and if PTE Kovco's head was in the normal position and facing to his front, a degree of approximately 45 degrees can be established. But as soon as we start
40 talking the head to the left or to the right, that angle changes.

In respect of the post-mortem results showing the track of the missile and the project through the head, do you have any knowledge of that and are you able to speak to the positioning of the weapon?---I - I can. The
45 position of the weapon had to be to the right side of PTE Kovco's head

and it had to be in close proximity.

5 I'll just provide that replica to you now. Mr President, I understand that this has been produced by Inspector Hayes who was a witness here yesterday and that it has been checked for safety this morning, that it is not a firing weapon, but I just ask you to confirm that Mr van der Walt please?---That is correct. This is a replica of a Glock self-loading pistol. It is inoperable, so it is safe to operate.

10 Now, is in terms of its dimensions and characteristics, what's the similarity with the weapon that Detective Sergeant Snow tested and that you confirm?---The general size and look of that pistol is similar to the one that was tested by Sergeant Snow.

15 Mr President, I just make that available for assistance. I don't propose to tender the item, but it may be that in the course of examination by either questioning by the Members and yourself or by Counsel Representing that may be of assistance.

20 PRESIDENT: Thank you.

COL GRIFFIN: I have no further questions for Mr van der Walt and I don't propose to tender his original statement which already appears as part of Exhibit 49, but I will tender the redacted statement, sir, as a public document.

25 PRESIDENT: The redacted document is now marked as an exhibit, subject to any other comment from the Bar table, it is marked as Exhibit 87.

30

#EXHIBIT R87 - REDACTED STATEMENT OF MR van der WALT

35 LTCOL HOLLES: Can I just confirm that that report or document is signed? The copy I had was not signed by the witness.

40 COL GRIFFIN: Is the original document signed Mr van der Walt?---The original document is signed. The redacted one is not signed. The photocopies that were made started too low on the document, so it basically cut out the bottom part which contains my signature.

The original document is signed?---That is correct.

45 PRESIDENT: I'm comfortable if you've got no - - -

LTCOL HOLLES: Can I ask if the redacted copy has everything on that's on the original?

5 PRESIDENT: Obviously the redacted parts are missing the - - -

LTCOL HOLLES: Apart from the bottom I'm talking about.

10 PRESIDENT: - - - bottom, yes. Of course we'll all be looking at the unredacted part, which is part of 47. I take it the summary concludes at the end of the words "At the time of the discharge of the firearm" and that's all that's in it?---That is in it.

15 So there's nothing further?---Except for - if I just hold this up, this block which contains wording: Matter of PTE J Kovco, the ballistic reference job number and my signature, that is not on the redacted part.

Are you comfortable with that?

20 LTCOL HOLLES: Yes, Mr President.

PRESIDENT: LTCOL Wilkinson, any questions?

25 LTCOL WILKINSON: No questions.

PRESIDENT: LTCOL Green?

LTCOL GREEN: Thank you, sir, very briefly.

30 <EXAMINATION BY LTCOL GREEN [1046]

35 LTCOL GREEN: Mr van der Walt, to load the 9 mm Browning pistol you need to insert a magazine into the pistol grip?---Yes.

Obviously the magazine must be loaded or containing live cartridges or rounds?---That is correct.

40 You then slide the slide grip to the rear, on its return it picks up a round and inserts the round into the chamber?---Yes.

45 Move safety to safe and you can fire the action at that point?---You put the safety on fire and then - - -

Move the safety to fire and from safety you can fire the action at that point?---That is correct.

5 Approximately how long would it take an experienced weapon operator or user to load a pistol and discharge the round?---That action will be very quick to experience person, more or less one second.

One to two seconds, thank you, sir.

10 PRESIDENT: Yes, anything further?

LTCOL GREEN: No, thank you, sir.

15 PRESIDENT: LTCOL Holles?

LTCOL HOLLES: Sir, thank you.

20 <EXAMINATION BY LTCOL HOLLES

[1047]

20

LTCOL HOLLES: Just picking up that last point Mr van der Walt, if you cock the 9 mm Browning you then have to apply the safety catch positively, do you not because you can't cock the weapon with the safety catch on? The safety catch fits in up under the slide to prevent it firing? ---I did not examine this specific firearm. I know that there's a difference between the different models of the FN Browning self loading pistols. Some of them have ambidextrous safeties and some of the safeties with different than others, so I'm not - - -

30

If you take it this is an ambidextrous safety?---Yes.

That is the safety device is located on both sides of the slide cover?---Yes.

35 Then the safety has to be applied after the weapon has been cocked to prevent it firing?---That is correct.

40 So if you simply let the working parts go forward, the weapon can then be fired without either applying or taking off the safety catch?---The - as soon as the slide of the firearm is in the front position and the hammer is in it's rearward or cocked position, a force needs to be applied to the trigger for the firearm to discharge.

45 I appreciate that. My point is simply that at that stage, that is having cocked the weapon, the weapon can be fired. You don't need to either

apply or disengage the safety catch as a further step in the operation of the weapon?---I'm not a 100 per cent sure about that, but I think that is correct.

5 Are you familiar with the 9 mm pistol or not?---Yes. Not the specific one. I did not examine this firearm.

No, I appreciate that. You're familiar with the 9 mm parabellum cartridge?---Yes.

10 It's been around, I think, since what, the 1890s?---It started getting popular probably around about early 1900s.

15 Certainly it was designed, I think, in the late 1890s by, I think, Mr - anyway it's a German design pistol cartridge?---It's a German design pistol cartridge.

20 There have been many, many, many millions of them made over the last 115 years?---That is correct. Whether it's definitely 115 years, I'm not sure about that.

All right, certainly a 100 years' worth of manufacture of that particular type of cartridge?---Approximately.

25 9 mm rimless round?---Yes.

I'm not putting this to you as a positive scenario, but I'd simply like you to agree or disagree with me as I paint each path of this particular scenario. Do you understand?---Yes.

30 The barrel in the 9 mm self-loading pistol can be removed, can it not? ---Yes.

35 In fact one of the operating characteristics of the weapon is that the barrel in effect floats within the frame?---That is correct.

40 That is of use militarily because it enables rounds to be chambered without the exacting specifications or being affected by a little bit of dirt or grit or something like that inside the operating features which you will strike with weapons which have a fixed barrel?---That's not necessarily the case, no.

45 But certainly the 9 mm is notorious within the trade, if I can put it that way, for having a barrel that moves about a little bit?---Yes, that is just a method of operation called the drop-in breach.

Barrels between 9 mm are interchangeable, are they not?---They are between the specific self-loading pistol, yes.

5 So if I have a particular type of 9 mm pistol and somebody else has a particular type of 9 mm pistol there is no reason why the barrels can't be changed between the frames?---That is correct.

10 I'd like you to consider this scenario: that the statement which led you to say that no firearm in the world could have fired that bullet is based on these facts: (1) that you have examined or read the papers which did examine the microscopic markings contained on the recovered expended round?---Yes.

15 You've also examined the round which you understand was recovered stove-piped from the breach of the pistol in question?---Yes.

20 It is a comparison of the markings contained on those two items against test fired projectile and test fired expended cartridge case which enabled the conclusion to be reached that that came from that particular weapon? ---Yes.

25 Can you please consider this scenario: if a round was fired from a particular weapon which had had a barrel moved from another weapon and then the expended cartridge comes from the original weapon, would you not produce the same result?---If barrels were changed, interchanged, I would have made - the bullet - if the barrel was interchanged prior to the incident I made that barrel - used on the incident or the bullet picked up at the scene positive with the test fires discharged by a barrel provided to us.

30 So what you're saying is that it is the comparison of both that led you to that conclusion?---Yes.

35 Was there any attempt to match macroscopically or microscopically the stove-pipe round against the recovered cartridge?---The recovered cartridge?

40 The recovered projectile, I should say?---It is ballistically impossible to link cartridge cases to bullets. The stove-pipe cartridge will be linked to the test fired cartridge cases discharged by us and the bullet that was removed from the roof, it's my understanding, was linked to the bullet discharged by us into a water tank.

45 Just finally on that issue, do magazines on 9 mm pistols leave impressions or marks on the rounds that are fed into them and expended from them?

---Yes.

5 Is it possible to test whether or not a particular round has come from a particular magazine?---Yes, but in general the success rate regarding that is not as successful as fired cartridge cases because this is just the cycling process. It is still possible, but the success rate is just lower. During the firing process we have significant amounts of pressure that forces marks to be transferred, whereas if you just cycle a cartridge through a firearm the marks are just put there by normal - basically the force of the firearm.

10 But my question is simply this: that there are both metal and plastic components within a 9 mm magazine?---Whether there is plastic within the FN Browning I'm not a hundred percent sure, but there might be.

15 Would you accept from me the plate above the spring which forces the rounds up is plastic?---Yes, it might be plastic, it might be metal.

The rest of it is metal?---Yes.

20 Are the metal parts of the magazine sufficient to impart unique characteristics to rounds coming from that particular magazine? ---Generally when one gets marks on a cartridge they would come from the magazine lips which is the top part of the magazine. As it gets pushed out of the magazine into the chamber of the firearm those - or the side of the cartridge scrapes against those lips and it leaves striations on the side of the cartridge.

25 This is no criticism, but was any testing done of the magazine against the stove-pipe round?---No, but it is possible to - if barrels were interchanged after the incident it would be possible to pick that up.

30 My question was simply directed at whether the possibility of a change in barrel would affect the way in which the examination or the results of the examination, and I think you've answered the proposition that from a test fired it would have done so?---Yes, like I said, the test fired bullets were positively linked to the bullet picked up at the crime scene, which is my understanding this was the bullet picked up at the crime scene. The fired cartridge case which stove-piped into the - or in the mechanism of the firearm was positively linked to the test fired cartridge cases discharged by us.

35 How easy is it to change the bolt and the firing pin in a 9 mm?---The firing pin would take a bit more effort to - when you say "bolt", do you refer to the slide?

45

The slide, yes?---That's very easy to remove the slide. But once again we will pick that up. If I can just have a second.

5 Certainly?---Because I might clear this whole issue. The manufacturer of the firearm puts the serial number of the firearm on the frame of the firearm as well as the slide of the firearm. So if the slide is changed with a different slide we will pick that up because the serial number on the frame and the slide will differ. In this instance the serial number of the slide and the frame was the same. So there was nothing leading the investigator of
10 the firearm to make a note that parts had been interchanged between the frame and the slide.

15 Sir, there's a number of questions I'd like to ask Mr van der Walt about this, but it's probably better if the evidence from the people who teach the weapon itself is taken before I ask those questions. I wish the officer no inconvenience. But if it's possible perhaps he might be recalled, if that's necessary, at a later stage.

20 PRESIDENT: How long is that going to be? How long are you going to inconvenience this gentleman?

LTCOL HOLLES: There's about five or 10 more minutes of evidence I'd need to take.

25 PRESIDENT: Are you available to listen to the full day?---I am.

We'd be able to get to him today I take it.

30 LTCOL HOLLES: I'd certainly hope so, sir.

COL GRIFFIN: We have a considerable amount of evidence that will be coming from military experts about the 9 mm pistol, I'm not sure if LTCOL Holles is proposing to interpose after a particular point because I don't know what it is that he wants to hear before he asks Mr van der Walt
35 the question. So I'm unable to answer the question, sir, I'm afraid.

40 PRESIDENT: I think I understand where you're going. I don't want to inconvenience this gentleman at all but, by the same token, we want a complete Inquiry.

45 LTCOL HOLLES: Sir, if I can do this: it may be that the weapon expert himself disposes of the issue. The evidence from this officer, as I understand it, is - if I'm mis-stating it, I'm sure Counsel Assisting will correct me - that it is the slide and the barrel itself which impart the unique characteristics to the expended cartridge and the projectile, and that is the

basis on which the conclusion is reached that no other weapon could have discharged that round.

5 The question is a technical one relating to the interchangeability of parts within the weapons; that's my question. It's probably best left to the expert to answer that but if this officer is able to agree that the premise that no other firearm in the world could have fired the round is based on the microscopic examination of the cartridge from the imprints by the firing pin extractor, et cetera, and from the bullet by the grooving in the recovered round, recovered projectile. They're also evidence which could be given by Mr Hoffman or by Sergeant Snow, if he's called, so for my point at this stage I'll say, no, I have no further questions and I should be able to cover it later.

15 PRESIDENT: Very well, thank you.

WITNESS: I can just comment to you, the question, during the examination, microscopic examination of the fired bullet and the fired cartridge case, we managed to positively link the chamber of the fired cartridge case. The chamber is in contact with the barrel so the fired cartridge case is also positively linked to the chamber which is linked to the barrel of the firearm. So if parts were interchanged, it had to happen prior to the incident because if we assume that the fired cartridge case picked up at the crime scene was the fired cartridge case, because that fired cartridge case is positively linked on its chamber as well as in its breach face to the firearm handed in at ballistics which makes the chamber of that barrel or the bit just before the barrel called the chamber positive to the exhibit cartridges case, as well as the bullet picked up on the roof positive to that firearm.

30 LTCOL HOLLES: Sir, may I ask one further question arising out of that?

PRESIDENT: Yes, by all means.

35 LTCOL HOLLES: Is it not the case that effectively the chamber on the 9 mm is an extension of the barrel?---It's not an extension of the barrel, although it is fixed to the barrel.

40 It's the one piece of metal, is it not?---It is one piece of metal.

It's removed for cleaning and for maintenance and other purposes? ---That's it.

45 Thank you, sir.

PRESIDENT: Thank you. LTCOL Berkley.

5 LTCOL BERKLEY: Yes, sir. Before we start, just a question to Counsel Assisting, if I may. I understand that the Defence Materiel Organisation personnel are going to demonstrate the operation of the pistol.

COL GRIFFIN: As I understand it, they're from Combined Arms Training Centre.

10 LTCOL BERKLEY: I'm sorry, thank you.

COL GRIFFIN: And that they will speak to the doctrine and also the working mechanisms of the weapon as well.

15 LTCOL BERKLEY: Is it intended today that someone actually manipulate the pistol?

COL GRIFFIN: Yes.

20 LTCOL BERKLEY: All right, thank you very much. It just saves you doing it, I suppose, I was going to ask that you do it but if someone is going to come along, that's fine. I do have some questions for Luke.

25 <EXAMINATION BY LTCOL BERKLEY [1104]

LTCOL BERKLEY: You were asked to check Sergeant Snow's findings, the tool mark findings?---Yes.

30 Have the tool marks been photographed?---The tool marks were photographed, yes.

Do you have the photographs with you?---I do.

35 Could you produce them, please?---I can produce them.

Once you produce them, may I inspect them.

40 PRESIDENT: Show them to counsel.

LTCOL BERKLEY: I see you produced two documents: one is headed "Page 2 of 3," it has its reference J06/517. It appears to be dated 15 May 2006 and, at "Page 3 of 3" with the same reference - sorry, the exhibit
45 number has changed - E2006/622/2, which is a split photograph of the

striking of the base of the cartridge?---That is correct.

5 In Exhibit E2006/622/3, it appears to be marks - are they marks on the cartridge case or bullet; do you recall? What am I looking at there?
---Those are the bullets.

10 Is that a split photograph as well?---That is correct. You will see a dividing line. Everything left of that dividing line is the exhibit bullet; everything right of that dividing is the test-fired bullet. The same with the five cartridge cases.

15 Just for identification, in relation to this photograph here, which is 2006/622/2, that's a comparison of the base of two cartridges: one - - -?
---That's correct.

Do you know which one is the cartridge found in the weapon?---The one on the left-hand side.

20 That's the one found at the scene?---That's correct.

This is the one of the test-fired cartridge?---That is correct.

25 How many cartridges were test fired for that examination, that comparison?---There were numerous cartridges discharged but, for the purposes of comparative microscopy, we normally test fire three. I wasn't personally involved in the test firing of it.

30 I understand?---But as a procedure we test fire three, but I know there were more tests regarding proximity, mechanism, et cetera, et cetera, which my other colleague would give, there were numerous cartridges discharged.

You were asked by your colleague of course to check his findings?---Yes.

35 So you informed yourself of his findings by looking at the photographs or the cartridge cases under the microscope: which one?---Five cartridge cases under the microscope and five bullets under the microscope.

40 The marks here, perhaps you could explain what you say is the similarity, just for evidentiary purposes?---Can I just have that again, please.

Absolutely.

45 PRESIDENT: Do other counsel wish to have a look?

COUNSEL REPRESENTING: No, sir.

COL GRIFFIN: It may be of assistance if we put it on the document projector so that it's seen by everybody.

5

PRESIDENT: Can I ask that be done so people can see it.

COL GRIFFIN: Then, Mr van der Walt, you will be able to indicate with your laser pointer that you have there.

10

PRESIDENT: Is that going to provide us with enough detail for you? ---That's enough detail for me, thank you, sir.

LTCOL BERKLEY: Now, sir, we need this evidence publicly and I'd like you to assist me in that regard by using whatever methods you like, but indicate to you what you say is the features - firstly indicate to us what we're looking at and what are the features that cause your conclusion that it's the same firing mechanism that fired each of those bullets?---Firstly I would like at the start by saying that these photographs aren't an indication of the positive identification. This is purely for our note taking purposes to show us later on what we have looked at. Normally we don't produce photos at all in Court matters. These photos show us - what we're looking at firstly is the back of the five cartridge cases caused - the marks on it caused by the breach face. Now, all the writing there, the 9 mm and the CBC and the FC is made by the manufacturers. Like I said earlier, there's a dividing line separating this image into two images. Left of that dividing line would be the cartridge case found in the firearm that got jammed in its mechanism. Right of that dividing line would be the test fire discharged by Sergeant Snow at our office.

15

20

25

30

Now, looking under the microscope I see the two images and there's some areas of correspondence there, let's call that an upside down L which I'm pointing to now and on the left-hand side we can see it as well. Now, within - you need a steady hand for this, within that L we see some striation and that striation appears on the test fired cartridge case as well. But those two images in front of us does not convince me that these things or these objects are positive to each other. We look at much more than that. We would look at the extractor, we would look at the ejector, we would look at the chamber and we would look at the firing pin and after looking at all those marks, we will come to a conclusion.

35

40

Now, can you tell what made those marks on the cartridge cases, the upside down L?---Those marks would be made by imperfections on the breach face of the firearm.

45

And in relation to the other testing, did you actually perform - sorry, is there any record of that other testing? You say that that's not enough alone?---Yes.

5 All right, and there are other procedures?---That's correct.

When asked to check your colleague's work, did you manually perform any tests?---Tests?

10 Did you manipulate any of the physical objects, other than to view them under the microscope?---No, I - I had a look at the exhibit cartridge case and the test cartridge case and I looked at the different possible surfaces that can individualise the two items to one another.

15 But isn't it the case that unless you virtually fire each of the Browning FNs possibly in existence you don't really know - sorry, there is a great possibility that they can leave very, very similar marks, other Browning FN in use can leave a very similar mark?---They can use similar - they can leave similar marks, but when we look at marks under a microscope,
20 firstly we differentiate between what type of marks we're looking at. A different FN than the applicable self loading pistol of FN can leave similar class characteristics which would be say the shape of the firing pin, the size of the firing pin, ejector, extractor, et cetera, et cetera. But within these class characteristics there are individual characteristics which no
25 other self loading pistol or firearm in the world can reproduce.

What are those?---Those are individual imperfections that occurs during the manufacturing process and it can't be duplicated.

30 Can we have the other photos please?

WITNESS: In short basically the individual characteristics to a firearm is what - or are what fingerprints are to human beings.

35 LTCOL BERKLEY: That raises another question. Firstly, what are we looking at here? Can you tell us what that is?---Once again, those are - that is one image which is actually two images because it is split once again in the middle by a dividing line. Left of that dividing line is the exhibit bullet, right of that dividing line is the test fired bullet. What
40 we see there - what I'm point now, that line there and that line there is what we call a land impression. Now, during the manufacturing process a solid steel bar is drilled by the manufacturer. Then basically the manufacturer has got a whole cylindrical type of metal tube.

45 Now, if he manufacturers a self loading pistol with that barrel, one wants

that barrel to be accurate. Rifling is then cut into that barrel. Now, once again class characteristics is determined by the manufacturer which is for instance the size of the land impression which I'm showing now. Now, when the rifling is cut into the barrel, shavings are scraped off between this cutting surface and the metal inside the barrel which causes unique damage to the inside of that barrel and if we look at the smaller striated lines which does not show that clearly on this photo. Is it possible to make that a bit lighter? But I can see them, but the people in the back might not be able to see them, but there are numerous lines there, one, two, three, four lines that basically goes from the bullet to the right and then we have the dividing line of the microscope, but they carry on on the exhibit bullet and that indicates to me that the exhibit bullet was discharged in the same firearm that discharged the test fired bullets.

Now, when we look at the marks on this bullet, if there's a similarity of the marks, those marks mean that they're fired out of the same barrel because it's the barrel that makes those marks?---That's correct.

Now, of course as the bullet strikes any object, of course it can be marked up as well?---That's correct.

Is it fair to say that all tool marked identification depends on the eye of the beholder? Its quality is in the eye of the beholder?---That is correct. There are numerous methods that have been experimented with, but right now - and the procedure in our office is you rely on your training and your experience to be able to say that yes, that is a positive identification or no, that is a negative identification or it's an inconclusive identification.

Thank you very much for your assistance.

<EXAMINATION BY COL YOUNG

[1121]

COL YOUNG: Mr van der Walt, my name is COL Young. I appear and represent the interests of PTE Kovco. You have an armourer's certificate in the care and maintenance of a Glock pistol. Is that right?---That is correct.

Do you have a similar certificate in relation to the 9 mm pistol?---The 9 mm FN pistol?

Self-loading pistol, sorry?---Which self-loading pistol, the FN?

If we're talking specifically about the weapon?---The applicable firearm?

Yes?---No, I don't.

5 So would it be fair to say you're more familiar with the Glock pistol than the 9 mm pistol?---No, I'm familiar with them more or less on par because the operation more or less is the same.

10 Could you describe the main differences between the two weapons?---One of the main - there are numerous differences. Firstly, this is a more modern firearm. The frame is made of polymer whereas the FN is an old self-loading pistol and it's made of steel. The FN self-loading pistol has got an external hammer that is visible to the eye, whereas the Glock has got an internal firing pin which is active. It doesn't need to be struck by a hammer to discharge. The Glock doesn't have an external safety operated
15 by the thumb and where the FN has that.

How many rounds does a Glock magazine hold?---It depends what Glock we're talking about. It differs from probably seven to 30.

20 Thank you, Mr President.

COL GRIFFIN: I just wonder if those photographs - they don't appear part of the exhibit but they've been referred to. If Counsel want them
25 tendered as part of - following that questioning.

LTCOL BERKLEY: The purpose of the questioning was so that my client was aware of exactly what evidence was - - -

30 PRESIDENT: So you don't want them tendered?

LTCOL BERKLEY: We don't need to tender them.

COL GRIFFIN: I don't propose to tender them, sir.

35 PRESIDENT: Thank you.

COL GRIFFIN: I have no further questions for Mr van der Walt.

40 PRESIDENT: LTCOL Holles, will you require this gentleman further?

LTCOL HOLLES: Sir, no. I think the questions I need to ask can be asked of another witness on reflection.

45 PRESIDENT: Good, thank you. Thank you, sir. You may stand down and be formally excused. Thank you very much.

<WITNESS WITHDREW

[1123]

5

COL GRIFFIN: Sir, the next witness is Detective Inspector Hoffman.

10

<DETECTIVE INSPECTOR WAYNE WALTER HOFFMAN, sworn
[1126]

<EXAMINATION BY COL GRIFFIN

15

COL GRIFFIN: Good morning, Detective Inspector Hoffman. My name is Griffin. I'm Counsel Assisting the Inquiry. Would you state your full name for the record, please?---Yes, Wayne Walter Hoffman, H-o-f-f-m-a-n, and I'm a Detective Inspector of Police and a manager of the forensic ballistics investigation section.

20

Have you this morning been provided with a document that sets out the rights and obligations of a witness before Defence Force Inquiries?---Yes, I have.

25

Are you satisfied you understand that?---Yes, I've read the full contents. I'm happy with it.

30

How long have you been in your present position with the New South Wales Police Force?---I've been 25 years in the New South Wales Police, spending about 20 years of that in criminal investigation and forensic and crime scene work and for the last 10 years, the last decade, I've been the manager, commander, of the ballistics section of the New South Wales Police up till my current date at the moment.

35

How did you come to be involved in the investigation of the death of PTE Jacob Kovco?---At the time of the referral to the Coroner and to the New South Wales Police homicide section I was the acting commander of the Crime Scene Operations Branch relieving that position for a number of weeks as acting superintendent. I was also the referral officer for all crime scene incidents in the state during that period as well. So the matter was referred to me automatically when it was referred to the Coroner and the homicide section.

40

45

Did you prepare a certificate in respect of your evidence concerning the investigation?---Yes, I have.

I'll show you a document. Do you recognise that?---Yes, it's a copy of my certificate that I gave dated 18 May 2006 in a matter of PTE Jacob Kovco, and each page contains my signature.

5

Mr President, for the benefit of Counsel and Members of the Board, this document also is in the SIB report which is Exhibit 49 in these proceedings at Annex DDDDDDD, that is, seven Ds, if it assists you. That's the document in the classified exhibit. A redacted version has been prepared to protect the identity of one individual who is on operations. Detective Inspector, I'll hand you a copy of the redacted version. You'll see that it only contains one actual piece of information blacked out relating to that individual's identity on page 10. But we are required to adhere to that operational security protection for people deployed in the mission. Other than that one entry, do you agree that it's essentially the same document?---Yes, it is, except it doesn't - the cut-off, my signature is not at the bottom. That's the only difference.

15

That's the only difference?---Yes.

20

I propose to step you through that document, Detective Inspector Hoffman, to set out the background and the conclusions and findings that you came to, and also for you to describe to the Board what staff, if any, worked for you in the conduct of that investigation?---Okay.

25

You will see before you on the desk a document that sets out a matrix of identities. It refers to individuals on the operation, it has their name and then a corresponding number in another column. Do you recognise that? ---Yes, I do.

30

If you have occasion to refer to any of those individuals who are on operations, I would ask that you refer to them with reference to that document and the number beside their name?---Okay.

35

You set out there in your certificate that you're a Detective Inspector of Police attached to the Forensic Ballistics Investigation Section of the Forensic Services Group in Sydney, and that's for the New South Wales Police Service?---Correct.

40

Would you assist the Board, by reference to your certificate, with your own technical training and experience in the area of forensic matters? ---Yes, I have studied forensic firearms identification and the identification of ammunition components by comparative microscopy. I have tested and examined many thousands of firearms, weapons and ammunition components of both commercial and military origin, and

45

5 studied various Australian small arms and ammunition manufacturing methods. I have examined the manufacturing and assembly methods of various small arms ammunition and explosive facilities within Australia and the United States of America. I have studied the techniques adopted by other Australian police authorities in the fields of firearms identification. I have attended numerous scenes of crime involving firearms, weapons and explosives within Australia and the United States of America and specialised in the collection, preservation and examination of exhibits within Australia. I have attended numerous autopsies upon human beings who have been fatally wounded by weapons and firearms of various calibres and studied the techniques of gunshot wound interpretation.

15 Within the field of gunshot wounds I have attended a wound ballistics workshop conducted by Dr Vincent Di Maio, the Chief Medical Examiner of Bexar County, Texas, in May 2002 at San Antonio, Texas, USA. In the United States of America I have studied the investigation of firearm-related crime and the techniques and procedures adopted by police, law enforcement authorities and the US Military at the following: Department of the Army, United States Army Criminal Investigation Laboratory, located in Forrest park, Atlanta, Georgia, and the Georgia Bureau of Investigation; the various laboratories and firearm and technical branches of the Bureau of Alcohol and Tobacco and Firearms located in Atlanta, Georgia, Washington DC, Rockville, Maryland, and the Bureau's National Tracing Centre at Falling Waters, West Virginia. The laboratories of the Federal Bureau of Investigation, FBI, and the Washington Metropolitan Police Department, both of which are located in Washington DC. The laboratory of the Pennsylvania State Police in Harrisburg, Pennsylvania. The laboratory of the New York Police Department and the New York/New Jersey Regional Crime Gun Centre, both of which are located in New York City.

35 I am a member of the Association of Firearm and Toolmark Examiners, AFTE, having attended AFTE International training conferences in Annapolis, Maryland, July '97, Williamsburg, Virginia, July '99, and San Antonia, Texas, in May 2002 in the USA. I have completed a course conducted by Smith and Wesson Academy, USA, attaining an Armourers Certificate in the care and maintenance of Smith and Wesson revolvers. I have examined the assembly and production processes of Glock self-loading pistols at the assembly factory located in Atlanta, Georgia. I have undertaken independent proficiency testing in the identification of firearm, ammunition and weapons components by the National Institute of Forensic Science, Australia, called NIPS, and the Collaborative Testing Services, Virginia, USA.

45

I've been awarded and undertaken an official New South Wales Police Scholarship Study Tour to the United States of America during July and August 1999. In the USA I was able to examine Forensic Ballistics Identification and Intelligence Computer Systems for their use and role in criminal investigation. I made a number of recommendations which resulted in the acquisition by the New South Wales Police of the Integrated Ballistics Identification System, called IBIS, in June 2000. I have presented a paper in relation to procedures and systems utilised within the field of firearms examination, titled, "Implementing the Integrated Ballistics Identification System in NSW," at the 16th International Symposium on the Forensic Sciences in Canberra in May 2002.

On 24 November 2005 until 17 December 2005 I was deployed with Federal and State police officers, as well as other civilian forensic specialists to Phuket, Thailand. I was deployed as the Australian Federal Police Disaster Victim Identification, DVI Commander, for "Operation Cawdor." Part of the responsibilities and duties of the DVI Commander was Liaison Officer to the Joint Chief of Staff and the Royal Thai Police for Thai Tsunami Victim Identification.

My specialist expert evidence has been accepted at Local, District, Supreme, Coroners Courts and the Administrative Decisions Tribunal, ADT, in the State of New South Wales. This also includes the Federal Court of Australia and Australian Defence Force ADF Military Boards of Inquiry.

I have carried out the following investigations and given evidence in respect to the Australian Defence Forces and Military Boards of Inquiry. The forensic investigation of the fatal shooting (suicide) of Army serviceman Scott Watson located at Keira Block, East Hills Army Barracks on 12 August 1986. On 1 May 2001 I conducted a forensic examination of an Australian Army Steyr 88C Carbine rifle, rifle attachments and ammunition for the Small Arms (Weapons) Fire System Support program, Land Engineering Agency, Department of Defence, Maribyrnong, Victoria. This resulted in giving expert forensic evidence at the Military Board of Inquiry into ammunition contamination convened by the President, LTCOL Peter Schmitt at Victoria Barracks, Sydney, on 14 May 2001. On 3 April 2005 I was carrying out duties as the on-call referral officer for the Forensic Services Group. On that date I coordinated an FIG response resulting in the post-mortems at the institute of Forensic medicine Glebe, of nine ADF personnel from the Sea King 817 Squadron Detachment crash on the Indonesian island of Nias.

Thank you. How did you come to be involved in this particular

investigation? What were the circumstances and mechanics of that?---I was contacted by the State Coroner, Mr Abernethy, and requested to provide a forensic response. As a result of that, I then contacted the Homicide Unit and liaised with Inspector Wayne Hayes in providing a forensic support team to the entire investigation of this matter.

What was the composition of the team?---The team - I appointed Sergeant Tim Snow as the ballistics case officer in charge of the ballistics part of it and, as matters developed, myself and Sergeant Snow did not go to Iraq, Baghdad, but I nominated Scientific Officer Lucas van der Walt, who's given evidence here this morning, and also Crime Scene Officer Phil Elliott to accompany Inspector Wayne Hayes to Baghdad to provide a forensic response to that crime scene. Also at the same time, as I said, Sergeant Snow was the allocated case officer and he carried out the examinations and trials of the weapon and other evidence in relation to this matter.

In respect of the findings and conclusions from that evidence, do you simply delegate those matters to the case team or do you retain a supervisory role, or participate yourself in any way?---As far as the crime scene, I can review it but the other matters, a lot of those I was present for the examinations and reviewed everything, as I'm supposed to do anyway to conduct monthly reviews of the matter and go over all the evidence, and make sure that everything has been done properly and to our guidelines. The ballistics and the Forensic Services Group of the New South Wales Police is a NATA-accredited forensic laboratory under the guidelines of NATA in Australia, and we were accredited in August 2005. We have to adhere to all the guidelines of a forensic laboratory and that is part of those guidelines.

I show you a document. What is that?---This is a certificate, and it is titled, "NATA Accredited Laboratory:"

National Association of Testing Authorities, Australia has accredited New South Wales Police Forensic Services Group, Sydney Police Centre, Forensic Ballistics Investigation Section following demonstration of its technical competence to operate in accordance with ISO17025, the facility is accredited in the field of forensic science.

I tender the document, sir.

PRESIDENT: Any opposition to that tender?

COUNSEL REPRESENTING: No, sir.

PRESIDENT: Marked as Exhibit 88.

5 **#EXHIBIT 88 - NATA ACCREDITED LABORATORY
CERTIFICATE**

10 COL GRIFFIN: What was your next involvement in the investigation
then Detective Inspector?---After I reviewed the matter, I was present for
the safety testing of the exhibit handgun, the calibration of the test rounds
that were fired through the weapon, proximity testing to determine range
of muzzle barrel of the firearm to the contact wound and generally
15 reviewed the matter, including debriefing of the team upon their return
from Baghdad Iraq before I entered into leave and returning to work in
July.

I show you a document. Do you recognise that?---Yes, this is a expert
20 certificate in the name of Timothy Snow, dated 22 May 2006 in the matter
of PTE Jacob Kovco and each of those papers has - contains the signature
of Sergeant Snow.

Mr President, Members and counsel, this document also appears in
25 Exhibit 49, the SIB report as Detective Sergeant Snow's report.

Now, you supervised and adopt that report or approve the report, is that
the case Detective Inspector?---That is correct. What I have to say is I
was present for a lot of the procedures and examinations that Sergeant
Snow carried out, but I can't give any evidence in relation to the positive
30 identification of the cartridge case and the projectile to the firearm and
Scientific Officer Luca van der Walt was present for that comparison
microscopic work, so I cannot give that evidence and I believe he has
given that evidence this morning.

Indeed. In respect of your own report at page 5, if you could just turn that
up. You describe there receiving certain items from Inspector Hayes,
would you tell the Board about that please?---About 10.20 am on
Saturday, 29 April 2006 I received a telephone call from Inspector Hayes
who told me certain things. As a result of that conversation I immediately
40 attended the forensic ballistic section at the Sydney Police Centre,
Goulburn Street, Surry Hills. About 11 am on that same day, Inspector
Hayes also attended ballistics at BIS and handed me the following exhibit
items contained in a sealed cardboard box: one 9 mm parabellum calibre
Fabrique Nationale FN self loading pistol serial number 245MY06578,
45 one 9 mm CVC manufacture fire cartridge case and one impact damage

spent projectile. Upon receiving these exhibit items on 29 April, I carried out an initial examination, cursory examination of these exhibit items and I then go through those details. Would you like me to continue or stop there?

5

Just at that point, Mr van der Walt has given evidence in respect of the testing done by Detective Sergeant Snow, because of the characteristic imparted to the projectile and to the cartridge case Detective Sergeant Snow opined in his report that they were fired from the exhibit weapon that you've referred to there receiving from Inspector Hayes with that particular serial number 245MY06578. Mr van der Walt also offered the opinion that no other weapon could have created those characteristics. Do you have a view on that?---No, I wouldn't like to offer a view because I wasn't part of the identification process. The identification process was carried out in my laboratory, but it was carried out - the process is this; I'll explain it regarding how we achieve identification just quickly for the hearing.

20

We have a microscope room and a bullet recovery tank. Usually we test fire any exhibit weapon and then we look at the test fired cartridge cases and bullets to the exhibit items and we all do that in a microscope room using comparison microscope. But just in summary, the person who does the identification has to be a qualified ballistics expert under the guidelines of NATA which Sergeant Snow is, but also his identification has to be confirmed under the guidelines of NATA by a second ballistics expert and that was Scientific Officer Lucas van der Walt. So complete guidelines were carried out, they were the only two people who made that identification which confirms their identification to each other.

30

And is that a specialist expertise that you have or is your role the command and the investigation side of things?---I do both, but in this matter those two officers carried out that function. I wasn't involved in that function, of the identification.

35

Learning to speak generically rather than the particular examination, Mr van der Walt offered the advice to the Board that the characteristics transferred to cartridge cases and projectiles by the weapon, he likened them to fingerprints for human beings and that they are unique in that regard and as I understand it, that was the basis of his suggestion that that round was fired only by that weapon, no other weapon could have produced those characteristics?---Yes.

45

Are you able to offer a view on that?---Yes. Only by adding that the identification process is not an easy process, it's not quick. There's a lot of variables. In relation to the cartridge case it depends on the corrosion

factor to a cartridge case, if it had been squashed or damaged that can delay an identification and make it long. With a bullet, if its impact damaged by hitting an object or going through a body and hitting other secondary objects, that also will have damage on it. So the process could
5 take from an hour or a couple of hours to may be a whole day or a number of days.

So the process is not a quick one. It's exacting and it's a microscopic process so that the whole surface of the cartridge case is examined
10 microscopically, the whole surface and in a cartridge case to identify it, we have identification areas such as the firing pin impression, breach face marks from the front of the bolt which is holding the cartridge case in the chamber, ejector mark, extractor mark and also chamber marks and magazine marks which can be imparted onto the surface of the cartridge
15 case by in fact the magazine in a weapon.

So we use all those fields of identification to look at a cartridge case and look for each one of those to form an opinion on a positive identification. On the bullet or the projectile itself we will look at the entire surface of
20 the bullet, we will look at the lands and groves which are the high and low points in the bullet and in between those lands and groves of all the microscopic individual striations to form an opinion of an identification.

Can I extract from that two things then; do you endorse or disagree with
25 Mr van der Walt when he says that those characteristics are akin to fingerprints for human beings the characteristics that you've described? ---Yes it's very similar, yes.

Do you, as a consequence of that, endorse or disagree with his proposition
30 that no other weapon could have fired that round and created those characteristics?---Well I agree with Sergeant Snow's identification and also the confirmation of Scientific Officer Lucas van der Walt, plus the review. Also what I should add is that that matter was also reviewed by a senior officer, another expert. So I must add the process with NATA
35 accreditation is an officer makes the identification, the second officer confirms or disagrees and in this case it was confirmed and in my absence, my coordinator and a senior officer senior to Sergeant Snow, another ballistics expert has reviewed that matter before the certificates and this information has been released for this hearing. So it's gone through three
40 quality control systems before it's reached this hearing, so I totally support their findings.

On the next page of your statement at page 6 you refer to the appearance of the materials that you received from Inspector Hayes, that is what was
45 inside the box and its condition, would you just take the Board through

that, please, when you received it. Was the box open?
---No, the box was sealed. The cardboard box was labelled - it had a
printing label's A4 size multipurpose premium paper cardboard box. The
5 box was measured and was approximately 325 mm in length and 230 mm
in width and 90 mm in depth. The box was sealed at all ends and
openings with tape, tape which I cut open, and the box was photographed.
I've produced photographs with my certificate of the condition of the box
sealed with tape before I cut it open.

10 We have an exhibit which I'll have shown to you now which is the box. If
that would be shown to the Detective Inspector, please, being Exhibit 82
and Exhibit 83, the bag that it came in, please?---That is the box that
contains the forensic services group seals and there's appropriate seals by
15 Sergeant Snow there that I can see just without going through any further
and the crime scene, they were the evidence seals as well. The box when
it was received at ballistics was on its own sealed and as soon as we
opened the box and examined the weapon - and I was wearing gloves at
the time that I opened the box - it was - and everything was placed back in
20 the box and then sealed in this plastic bag and then allocated to
Sergeant Snow in his exhibit compactor. So it wasn't interfered with in
any other way.

The condition of the weapon itself in the box?---Contained inside the box
was one 9 mm parabellum calibre Fabrique Nationale FN self-loading
25 pistol, serial number 245MY06578, laying on its left side and attached to
the inside of the box by way of elasticised cords which I cut. I then
checked the pistol for safety reasons and carried out a render-safe
procedure wearing disposal gloves. I made note of the following state of
the firearm before that render-safe procedure. The pistol was minus
30 magazine and the top slide was in a forward closed position with the
external hammer in a forward down position. The left side rear safety
catch lever near the top slide was in the down disengaged off position. I
then carried out a render-safe procedure by pulling the top slide fully to
the rear position and was able to observe that there was no cartridge in the
35 chamber of the pistol. I then returned the top slide slowly to the original
forward position by releasing the slide. The pistol was relatively clean. I
could find no visual signs of any biological matter to the outside areas of
the pistol and around the muzzle end of the pistol. The pistol was not
40 further examined and was secured. The pistol had the following attached
to the lanyard loop at the bottom of the pistol hand grip. A cord lanyard
attached to a quick release catch. Also attached was a Department of
Defence DOD service police PD3 identification label. Laying on top of
the self-loading pistol was a sealed yellow envelope labelled containing a
45 9 mm projectile and cartridge case. Contained inside the sealed envelope
was one 9 mm fired cartridge case which was contained in a sealed plastic

5 bag. A cursory visual examination through the clear plastic bag determined that it has a head stamp indicating the following: a 9 mm calibre of CBC Companhia Brasillera de Cartuchos manufacture and bearing the numbers 04. The plastic bag was labelled as being DOD police identification label. The cartridge case was not further examined and was then secured. Contained inside the sealed envelope was one spent projectile which was contained in a sealed plastic bag. A cursory visual examination through the clear plastic bag was one of the spent projectile which revealed it was impact damaged and was a full metal jacket (fmj) construction. The bag was labelled as being DOD police identification label. The projectile was not further examined and was then secured. During the process of receiving these exhibit items and rendering the pistol safe I caused a number of photographs to be taken on that same day and those photographs are with my expert certificate.

15 You subsequently distributed those items to Detective Sergeant or is it Acting Inspector Tim Snow?---Back to Detective Sergeant Snow who was acting as in my position while I was relieving up. So those items - from memory, that day was either a Saturday or a Sunday on the weekend. So I attended the unit, went through that process which I've just described, sealed the exhibits back into that plastic bag which I just examined then and I placed that into the exhibit locked exhibit compactor of Sergeant Snow and saw him first thing on his next return and handed the items to him.

25 Subsequently to that, you attended at the post-mortem facilities for the examination of PTE Jacob Kovco's body. Is that correct?---I did, at 0930 on 30 April 2006.

30 I understand from your statement at the bottom there at paragraph - at the bottom of page 9 that you requested Sergeant Shibeci to collect gunshot residue swabs from both hands of the deceased?---That is correct.

35 And that samples were also taken from the entry wound?---Yes, that's right.

40 About the middle of the page you refer after observing various medical apparatus and bandages that the deceased's hands were not bagged or covered for any form of evidence protection?---That is correct, and we took photographs of that, but it did not stop or preclude us from taking GSR samples, which I believe had to go ahead and that's why they were taken.

45 Do you have anything to say about the fact that the hands had not been bagged prior to the time it came for your investigation to commence?

5 ---All I can say as far as the New South Wales Police goes and our forensic procedures is that a ballistic officer or crime scene officer in our group if they attended a crime scene in New South Wales would ensure that the hands would have been covered. Usually we get paper bags place it over the hands and secure it with some type of cord or elastic to preserve the hands for later analysis before it is conveyed to any morgue. Then we leave it then to the pathologist to remove the bags and then examine the hands and take whatever samples they need. But it's used as a form of protection in case there's any evidence there.

10 You'd be aware that PTE Kovco had been taken to a hospital for attempts to save his life before he died and that that involved medical procedures. Are you able to say whether or not in your experience in New South Wales people come to you at investigation stage having been through hospitals and are not bagged, their hands, in the same circumstances that you received PTE Jacob Kovco?---I totally agree. The incidents I've described, the bag in hand, is usually at a crime scene and the person is deceased. So there's no medical intervention. We don't usually have the opportunity to bag the hands if someone is taken to hospital and is being treated upon.

25 Now, on the next page of your statement it refers to a Sergeant Sayers carrying out a fingerprint procedure on the hands of the deceased. Can you tell the Board about that, please?---Yes. At the time of the post-mortem and of this matter things were very busy and so forth. I contacted Inspector Hayes and we - I was not aware of the complete identification process, if everyone had - was happy that PTE Kovco had been properly identified. So as an extra measure I asked for fingerprinting to be done. So still unsure if the body had been positively identified, I wanted to make sure that fingerprints was done just in case.

35 Are you able to speak to whether or not any fingerprinting was done in respect of the weapon or the expended cartridge?---Yes, from my knowledge, after we received the weapons in ballistics and I handed them over to Sergeant Snow the first thing that was done was I believe Sergeant Shibeci from the Sydney crime scene unit took swabs, wearing gloves, of the pistol itself for biological matter and DNA. He took swabs of the gun. After that was done, the gun was then taken out to fingerprints for them to carry out their fingerprint examination before its ultimate return back to my laboratory where we then carried out the normal examinations of test firing and all that. So that was done immediately after we received it.

45 Now, are you aware of any results of those fingerprinting examinations that were undertaken?---No, I don't. I have not got that in front of me. I

haven't read any further statements.

Are you aware of any results in respect of the swabs for biological matter that were done to the weapon?---No, I'm not.

5

Would you tell us then, please, your next involvement in the testing or otherwise in the investigation?---This is after the post-mortem, after that?

Correct, yes?---Okay. After that I was then in contact with Inspector Hayes making telephone calls and so forth that same day after the post-mortem. I was of the strong belief that a team should be sent to Baghdad, Iraq, to carry out an examination of the scene regardless of the state of the crime scene, and I conveyed those feelings to Inspector Hayes who agreed with me and he then set plans in process to have that done.

15

Did you also arrange for the gathering of ammunition for testing?---Yes, I did. I had a conversation with the retracted sentence, the soldier in Baghdad, Iraq. On that telephone conversation, which was very brief, I requested ammunition of the same make, type, calibre and batch as the exhibit ammunition and any other evidence to be secured for its admission to my laboratory.

20

Just above that reference on page 10 you express your opinion based on your training and experience about the gunshot wound there. Would you just restate that, please?---Yes. I am of the opinion that the deceased had suffered a fatal gunshot wound with the muzzle of a firearm in close proximity near contact with the right side of the face of the deceased at the moment of discharge.

25

On pages 11 and 12 you describe the receipt of containers of ammunition that you had sought for testing?---Yes, that is correct.

30

Then you go on at the bottom of the page to describe forensic procedures conducted under your supervision by Detective Sergeant Snow. Would you tell the Board about that, please?---Yes. Between 17 and 18 May 2006 the following forensic procedures were conducted under my supervision by Sergeant Snow. That is, chinograph velocity test firing of ammunition samples provided by the ATF which was the ammunition we received. Proximity testing for the purpose of determining firearm muzzle to target distance with exhibit self-loading pistol, general firing, cycling and function testing of the exhibit self-loading pistol, and finally, safety requirement testing of the exhibit pistol for firearms test as per the Australian Customs service requirements.

35

40

If I can just ask you to turn to Detective Sergeant Snow's statement that

45

you have there with you?---Yes, I have that in front of me.

At page 6 of 7 he describes in paragraph 9 at the fourth dot point what a proximity test is designed to achieve?---Yes.

5

Would you just read out that dot point, please?---Sure.

10

15

20

On Wednesday, 17 May 2006 at the forensic ballistics investigation section's test firing range with ballistic support officers Murphy, Temple and Kingston-Lee I conducted a series of proximity tests utilising the following: the 9 mm Parabellum calibre Fabrique Nationale self-loading pistol, serial number 245MY065878, 9 mm parabellum calibre CBD 115 grain full metal jacket cartridges, target paper. The purpose of these proximity tests is to establish the approximate position of the exhibit pistol at the time the shot was discharged. This is accomplished by comparing the appearance and size of the residues deposited on the target paper produced by discharging the exhibit pistol at the target paper at varying distances to the appearance and size of the residues noted surrounding the wound during the post-mortem.

Is that a correct statement?---Yes, it is.

25

Would you go on then to read the conclusion that appears at the foot of that page?---

30

Based on the proximity tests and observations made during the post-mortem examination I am of the opinion that the exhibit pistol was in near contact but not greater than five cm away from the skin at the time of discharge.

35

40

I understand that to be essentially the same opinion that you expressed in your certificate?---Yes, it is, except in my certificate I don't give a distance because at the time I gave my certificate it was straight after the post-mortem and it was previous to the proximity tests. But I totally - I reviewed the targets and the proximity tests and I was of that opinion - I had formed that opinion in my own mind once I saw the wound at the post-mortem and which was supported by the proximity tests.

So it's consistent with your view?---Yes, it is.

45

Would you turn over the page, please, of Detective Sergeant Snow's statement to page 7 and would you read, please, paragraph 10?---

5 *On Thursday, 18 May 2006 at the forensic ballistics investigation section's test firing range with ballistics support officers Murphy and Temple and Detective Inspector Hoffman I conducted a series of firearm cycling tests using the exhibit pistol. Firing the exhibit pistol with a slack hand grip it is possible to cause a stoppage in the cycling of the pistol, resulting in the fired cartridge case remaining within the chamber of the firearm or being extracted and partially ejected, causing a stovepipe.*

10 That reference, to you, in there you confirm your presence at that test?
---Yes, I was there at the test for the entire test and they were also videoed by way of camera the entire test as well. A large quantity - well, a fair number of rounds were discharged from that pistol during that testing.

15 Would you elaborate on that paragraph, please. Describe what the slack hand grip is, what was actually done and what effect it produced?---The slack hand grip is a colloquial term which is well known internationally around the world, not only by forensic crime scene people and people in the ballistics field, but also firearm instructors in both police and military fields. Especially in hand guns which are recall-operated, self-loading, if you do not have a firm grip of the pistol at the moment of discharge or when it's firing, the recall of the weapon is not directed correctly because the pistol is not gripped properly with a firm grip on the frame and the recall is absorbed into the hand which is not holding onto it properly, resulting in at times the fired cartridge case not to be extracted and ejected properly and be stuck in the breach in what they call a stovepipe position which means the cartridge case is vertical, standing upright out of the breach jammed in that breach which is locked between the chamber and the front of the bolt face. That is a common occurrence for an operator of a firearm not holding the weapon properly and not firm enough and that to happen. It does not happen all the time. But we were able to duplicate that on the firing range. But it is also an indicator, which is documented in forensic books and I have seen at crime scenes that a person who commits a self-inflicted injury to themselves, they are in control of the weapon at the time - or the operator is in control of the weapon at the time that the trigger is pulled at that instantaneous moment. But after that, the slack hand or dead man hand appears because they do not have control of their functions and the weapon does not cycle properly and you can get a resulting malfunction, like a stovepipe, in suicide situations. So you can see it in both types of situations, it's a common occurrence.

45 Did the weapon function as it should other than in the attempts to replicate the slack-hand grip?---Yes. I have not counted the number of rounds; we would have fired, at least for the test firing in the water recovery tank for the microscopic work, plus the chronograph testing, the target testing, we

5 would have fired to 50 to 100 rounds minimum through that exhibit pistol, and it operated and performed 100 per cent in its integrity. It was only when we attempted the slack-hand hold on the gun on the range in a controlled situation, and it was only after a lengthy time of doing that that we were able to reproduce that stovepipe malfunction. Other than that, the handgun operated perfectly.

10 What about the safety mechanism?---The safety mechanism was examined by Sergeant Snow. We didn't do - I have a further document going into all the safety tests and what we did to the weapon up in the laboratory, but we did not manipulate or play with the safety catch on the range during those tests. We just fired the handgun and carried out the velocity testing, the proximity and its cycling function. When we carried out the tests for accidental discharge, we carried out the Australian Customs test and we followed that to the letter, and I have a copy of that here today.

15 I'll show you a document now. Do you recognise that, Detective Inspector ?---Yes, I brought this along today and I provided it to the hearing; it's titled "Customs (Prohibited Imports) Regulations 1956, Regulation 4F, and this document is used by Australian Customs today and it's used - section of it is Part 3, "Safety Requirements for Firearms," and this test is carried out by Australian Customs of all imported firearms into Australia. This is the only official test to conduct safety tests for accidental discharge that we would use anywhere in Australia. There is no other official test so we used this official Customs test in this instance.

20 Would you tell us what you subjected it to pursuant to the legislative requirements in the Customs regulations?---If I may read through the document, the procedures that we put it through. Following on from Part 3, 1.6, this is what we subjected the firearm to.

The firearm, fully cocked and with the safety notch, if any, disengaged must not operate so as to discharge if -

35 and this is what we did, we:

held it with the barrel vertical and dropped it three times, being re-cocked after each drop, from a height of at least 35 cm and not more than 45 cm butt first on to a rubber mat.

40 I can let you know it was 45 cm, so it was at a much greater height.

This is with the weapon fully cocked ?---Yes.

45 A round in the chamber?---What we did was placed a primed cartridge

case which had a live primer in it so that we would know if the firearm discharged, we would hear it.

5 Fully cocked with the safety catch off?---Correct, with the barrel vertical and then dropped 45 cm butt first on to a rubber mat, and we did that three times.

What happened ?---The weapon did not discharge.

10 Please go on?---If we go to the next section, we then:

Struck it not more than six times -

15 We struck it six times:

at various points along it's length by a rubber hammer.

20 It then goes into the rubber hammer and its dimensions and weight - I won't go into that, but the rubber hammer that we had complies with that. The hammer, we:

25 *struck the weapon at various points along its length by the hammer by allowing the hammer to fall under its own weight once at each of those points with no pressure being exerted on the trigger and with the firearm being re-cocked after each blow.*

In each of those circumstances the gun did not discharge with those knocks.

30 Please go on?---

In the case of a firearm having an exposed hammer or exposed hammers -

35 which this firearm does, it has an exposed hammer -

40 *is struck once by a rubber hammer where it is held at the end of the handle with the head 30 cm above the point to be struck and is allowed to fall under its own weight. In the case of a firearm having an exposed hammer -*

which this does, and this is the case with this -

45 *each hammer or cocking device -*

the hammer in this case -

5 *is moved back towards the cocked position three times and immediately before the sear engages the bent or bents in the fully cocked position and with no pressure being applied to the trigger, the hammer or cocking device is released three times and allowed to travel forward under the pressure of the spring.*

10 We did that and the firearm did not discharge. That is by pulling the hammer back and letting it go under its own tension under spring to see if it would go forward and override the safety mechanism and hit the firing pin, and it did not.

15 Again, each time with a cocked weapon?---Yes, that is correct, and it did not discharge.

 And with a primed cartridge case in the chamber?---At all times, yes.

20 The weapon did not discharge?---That is correct. It goes on:

Unless the firearm is fitted with an adjustable trigger or triggers -

I think in this case the trigger is not one of those types.

25 *The trigger mechanism must not operate when a force of 11N is exerted on the central point of the trigger in the direction in which the trigger operates.*

30 In relation to that, I would like to make a comment, if I can just refer to my notes. I have the examination sheet of the trigger pressure of the weapon and I can state - I think it's in Sergeant Snow's certificate - that the trigger pressure of the exhibit firearm was 9.8 pounds or 4.465 gm, 4.4 kg, measuring 43.8N. So that well exceeded the minimum force or 11N.

35 You're referring there to page 5 of Sergeant Snow's statement at paragraph (a), the fifth line from the bottom:

A force of approximately 43.8N -

40 that being Newtons?---Yes.

And:

45 *(4.465 kg/9.8 lb) is required to function the trigger mechanism.*

?---That is correct, that's what the trigger pressure was measured at which far exceeds the minimum in the safety test and, talking about the trigger pressure of the weapon, I also brought to the hearing today a document, entitled, "Browning High Power Pistol Calibre 9 by 19 NATO Maintenance Manual," dated March 1998. Under the table of contents in Chapter 6 and section 6.5, it states in this maintenance manual regarding the trigger pull:

10 *The trigger pull for service pistols must not be lower than 20N, 2 kg.*

So that's double than the minimum required by this maintenance manual.

15 The significance of that for the regulations that you were taking us through, would you explain that, please ?---The significance is that it is not alarming for us, the trigger pressure. The trigger pressure for the exhibit weapon appears normal and okay and quite safe. The range that is required, it's not just over the minimum requirement, it's well beyond the minimum requirement for trigger pressure. The test also makes you look at - makes sure the firearm is fitted with an effective trigger guard and the exhibit pistol has an effective trigger guard, it didn't seem cracked or have any damage to it in any way. The test also makes you look at not only the trigger guard, the safety device, either mechanical or electronic - in this case mechanical - which will prevent the discharge of a firearm when engaged. We looked at the safety device, the safety lever and that worked properly and there wasn't any abnormalities that we could find with the safety catch, the safety lever.

30 Sir, I tender the Customs Prohibited Imports Regulations (1956) Regulation 4F that the Inspector has just taken us through.

PRESIDENT: Any opposition to the tender of the Customs Regulations?

35 COUNSEL REPRESENTING: No, sir.

COL GRIFFIN: Sir, I also tender the Browning High Power Pistol Maintenance Manual that the Inspector referred us to.

40 PRESIDENT: Well the Customs Regulations will be Exhibit 88.

#EXHIBIT 88 - CUSTOMS (PROHIBITED IMPORTS) REGULATIONS 1956, REGULATION 4F

45

PRESIDENT: Any opposition to the maintenance manual?

5 LTCOL HOLLES: Might I have a look at that maintenance manual please, sir?

PRESIDENT: The maintenance manual will be Exhibit 90. Everybody comfortable with the maintenance manual?

10 LTCOL HOLLES: I'd like to have a look at it, if I could, sir.

PRESIDENT: Very well.

15 LTCOL HOLLES: I understand the document I've been handed is an extract from the maintenance manual rather than the entire manual.

COL GRIFFIN: I tender the extract.

20 PRESIDENT: Which goes to the pressure on the trigger.

COL GRIFFIN: Correct.

LTCOL HOLLES: Yes, thank you, sir. I've got no objection.

25 PRESIDENT: Any other comment to be made? Mark it as exhibit 90.

#EXHIBIT 90 - EXTRACT OF BROWNING HIGH POWER PISTOL MAINTENANCE MANUAL

30

COL GRIFFIN: Inspector, referring again to Detective Sergeant Snow's statement, what you've just described to us is the material contained in short description at paragraph 11 on the last page of his statement, is that correct?---That is correct.

35

Detective Inspector, it's correct and trite to say that this is a weapon that can be fired with one hand, is that right?---That is correct.

40 You're satisfied that the safety mechanism on the exhibit pistol was efficient?---Yes I am.

45 And that other than the slack handgrip test it was in normal functioning order?---Yes and if I can add to that slack handgrip, it not only - it does not just apply to the 9 mm FN Browning, it applies to any self loading

pistol, short recall operated handgun, the same thing can happen, not just to the Browning.

5 Sir, I tender the redacted version of the Detective Inspector's statement, the original document already being Exhibit 49.

PRESIDENT: Everybody comfortable with the redacted version being tendered formally?

10 LTCOL HOLLES: Yes, sir.

PRESIDENT: Marked then as R91.

15 **#EXHIBIT R91 - REDACTED STATEMENT OF DETECTIVE INSPECTOR HOFFMAN**

20 COL GRIFFIN: Detective Inspector, with regard to Detective Sergeant Snow's certificate that is before you, as his supervisor, are you satisfied that you can state as to the accuracy of the contents of that document?---I can as I said before, because of the relevance of this matter and the importance, I reviewed everything and I was present for the majority of the tests that were conducted out and I was actually present when these
25 tests were carried out and viewed everything.

I tender the redacted version of Detective Sergeant Snow's statement, Mr President.

30 COL YOUNG: Sir, I'd object to the tender of that document. We've heard evidence from this witness expressing his opinion, that's sufficient. I object to another statement going where the author of that statement is not here to be cross-examined.

35 PRESIDENT: Is it ultimately that Sergeant Snow will join us?

COL GRIFFIN: It's a question of availability I'm advised, sir. Are you
40 able to assist us Inspector Hoffman in that regard?---Yes. He's interstate, but he is prepared to return if required.

Mr President, you are not bound by the Rules of Evidence. The document is presented by the supervisor who delegated the tasks and whose sworn evidence is that he observed and verified the tests contained. You've
45 heard from Mr van der Walt, the other expert within the organisation who cross-checked all these matters. I renew the tender.

PRESIDENT: Any other comment COL Young?

5 COL YOUNG: Might I just ask the witness, sir, were you present during
all the tests that were conducted by Snow?---No, I wasn't present for the
identification of the cartridge case and bullet to the firearm and the
proximity test, I wasn't there on the range, but I was there for the safety
testing and I wasn't there for the chronograph testing. But the proximity
10 testing with the targets, I reviewed straight after he did it the proximity
test and the targets and - and all his notes that he did at the time on that
date.

15 LTCOL HOLLES: Sir, I join in my friend's application to reject the
tender at this stage.

PRESIDENT: What would you like to say on that topic?

20 LTCOL HOLLES: Sir, the firearm itself is critical to the issues to be
determined in this Inquiry. The best evidence comes from the person who
conducted the examination themselves, they are available, they can be
brought here. It's my application that that occur and it's not to criticise
this witness or the previous witness, but at the end of the day this witness
has acted in a supervisory capacity, he has not actually sighted the testing.
For example, he just mentioned chronograph tests and as far as I know
25 there's nothing in Detective Snow's statement about muzzle velocities or
the velocity of the particular rounds involved. That may or may not be
relevant, but it's something that is, in my respectful submission, needed to
be tested.

30 PRESIDENT: LTCOL Berkley?

LTCOL BERKLEY: I have nothing to add.

PRESIDENT: LTCOL Wilkinson?

35 LTCOL WILKINSON: No, sir.

40 PRESIDENT: I'm going to allow the tender of Snow's certificate on the
basis that he is an expert, we are not bound strictly by the Rules of
Evidence, but I would foreshadow this, that if he can be made available to
us at some later time, I'd like that to happen.

COL GRIFFIN: We'll make that inquiry, sir.

45 PRESIDENT: That means if he's on holidays for three weeks, we'll wait

until he's available rather than drag him back off holidays or whatever he's doing.

COL GRIFFIN: Thank you, sir.

5

PRESIDENT: That will be marked at Exhibit 92.

10 **#EXHIBIT R92 - REDACTED STATEMENT OF SERGEANT SNOW**

COL GRIFFIN: Now, I'll show you a document Detective Inspector. Do you recognise it?---Yes, this is a document I prepared for today's evidence, it's two pages, it's titled Physical Evidence Indicators For Fatal Self Inflicted Gunshot Wound in the Matter of PTE Kovco and it bears my signature down the bottom and it was dated 18 July 2006.

Is it essentially a summary of the factors that you consider relevant and important for the advice arising from your investigation for the information of the Board?---Yes they are. It's a combination of my own experience attending crime scenes for over 20 years, especially ballistics crime scenes and also reference to other professional people in the field of forensic ballistics overseas who have written articles and books on actually these type of events that have occurred.

Mr President, I've provided copies of this document to Counsel Representing beforehand. I propose to lead Detective Inspector Hoffman through that resume that he's produced for the Board, but it may be that there are views from those that I wasn't able to speak to before we commenced, but they've had the opportunity to read it and if there are any objections to that, perhaps it would be useful to do it now before I embark on that exercise.

COL YOUNG: I would certainly object to the document going in and I would object to some of the comments made in the document if they're to be led from the witness.

LTCOL BERKLEY: I join in COL Young's application. The opinion of the witness is predicated on the basis that it was Jake who pulled the trigger. He's picked out some facts, physical evidence indicators and the witness has been saying physical evidence indicators. But I think by using those physical evidence indicators he intends - sorry, it's possible that what he's saying could be confused as to the intention to fire, whoever it may be, although the witness does say at the end of the day, right at the

end, that he can't say whether the firing of the weapon was intentional or unintentional. But it's still predicated on the fact that it was Jake. All I'm saying, sir, is we can cross-examine hours on it. The evidence is something that's really a question for the Board - - -

5

PRESIDENT: For the Board, and ultimately the Coroner perhaps.

LTCOL BERKLEY: Indeed, perhaps the Coroner. So anyway, I object to that. I don't wish to quibble with the witness's qualifications. But the opinions to be drawn from the physical evidence is a matter entirely for yourself and I don't think we can be greatly assisted by someone else doing it.

10

COL YOUNG: Sir, if I could finish what I was going to say. I'm not criticising LTCOL Berkley for interrupting. Some of the wording used is inflammatory. It infers intention on the part of PTE Kovco that this witness cannot give evidence of. What's stated in this document are matters ultimately for the Board to make findings of and it would be highly prejudicial if that document or that evidence is led from this witness in my opinion. Thank you, sir.

15

20

LTCOL HOLLES: Sir, I object to its tender also for a combination of reasons. First of all, it reaches conclusions which are ultimately the province of the Board at this stage and probably the Coroner ultimately. It relies upon a number of assertions which may or may not be disputed when further testing is concluded. I refer specifically to the document from Ms Franc or Ms Franco yesterday which was tendered. There are a number of assertions in there which do not necessarily in my respectful submission - are not necessarily conclusive of the finding which they purport to reach. For example, the deceased had ready access to his own service issued firearm at the time of the incident. Well, so did the other two in the room; so did a number of other people. But certainly there are three people with access to that firearm. That statement on its own doesn't in my respectful submission advance the matter at all.

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35

The incident occurred in the presence and the company of other persons which does not preclude the incident from being one of self-inflicted injury. That's true. Equally, it doesn't preclude the incident from being other than self-inflicted injury. In my respectful submission the document is unhelpful. It is conclusive. It goes beyond the proper providence of an expert proffering an opinion and it ultimately traverses the function and role of the Board itself.

40

PRESIDENT: LTCOL Wilkinson, any comment?

45

LTCOL WILKINSON: Nothing to add, sir.

PRESIDENT: LTCOL Green?

5 LTCOL GREEN: No, thank you, sir.

COL GRIFFIN: Sir, in my submission part of what you've just heard in
submissions from Counsel is precisely the reason why you should accept
this evidence. Several of the matters have now been traversed by Counsel
10 which has been put in to the proceedings. Issues have been raised about
intention or otherwise with other witnesses who have been called.
Dr Duflou was invited by Counsel Representing to express his opinion on
intention or otherwise. This witness is some 20 years experienced as a
very senior forensics and other investigation expert or specialist in the
15 area. He's put together a two-page resume of factors that he considered to
be important.

In doing so he's made some academic inquiry and quotes from what
apparently are well-known and accepted academic text in the area of
20 forensic investigation. He has not with him, he can prove those
documents. He's provided kindly extracts from the relevant documents.
Counsel have just demonstrated the point that by referring to the matters
in the evidence and then putting argument about it, that that is essentially
what it is. It's evidence that you can be addressed on. Other evidence can
25 be led to counter or to call into question and the witness can be tested
about his knowledge and expertise on the matters that he's referred to.

Quite properly, those are issues that can be dealt with in
cross-examination and in submissions in due course. But you heard the
30 extensive outline of history and experience that Detective Inspector
Hoffman brings and he's referred to that in this resume of the significant
facts as he sees them. In my submission to you it's in the interests of the
Board and the public interest to hear the expertise of a specialist from a
civilian agency, the New South Wales civilian authorities, the police,
35 looking into this military matter to hear that evidence. I agree with
Counsel Representing entirely, what you subsequently make of it is a
matter for you, for your commonsense, for your training and experience
having heard others' submissions.

40 He's referring to matters of fact that are in evidence and discussing those
factors. So in my submission to you, Mr President, this is evidence that
you can properly hear.

45 PRESIDENT: Thank you. Just bear with me for a moment. I propose to
allow the tender of the document. I do so on this basis: that this place is

not bound by the rules of the evidence. Ultimately what we're doing is a shorthand form of leading evidence; in other words, we can have it on paper written down or, to use a phrase, Counsel Assisting can extract. This man is an expert of many, many years in a peculiar area which is very pertinent to what we're about.

Now, at the end of the day the Board, and perhaps ultimately the Coroner, will make up their minds about whether they agree with him or disagree with him. But we're entitled I think to hear his opinions and to accept or reject them after we've heard all the evidence, after we've heard all the arguments that go with it. That's the course I propose.

COL GRIFFIN: May it please you, Mr President. I note the time. This may be an appropriate time to adjourn to provide the Detective Inspector with the authorities that he's assembled for him to take us through the document once it's put into evidence.

PRESIDENT: 0130.

COL GRIFFIN: Thank you, sir.

LUNCHEON ADJOURNMENT [1238]

RESUMED [1344]

PRESIDENT: Thank you, ladies and gentlemen.

COL GRIFFIN: Mr President, firstly on a procedural matter, I apologise I haven't had the opportunity to inform you earlier that LTCOL Wilkinson's client has returned from theatre and they are presently meeting with a view to being able to assist the Board further with his evidence in due course.

PRESIDENT: Excellent.

COL GRIFFIN: So he seeks your leave through me. He apologises for not being able to tell you in person.

PRESIDENT: There's nothing programmed which will be adverse to LTCOL Wilkinson's client?

COL GRIFFIN: That's correct, sir. I've just foreshadowed with him the

circumstances.

5 LTCOL GREEN: Sir, just while we're on that topic, can I indicate that COL Griffin was very kind enough to give us some briefing as to what he anticipates to be the next few weeks. Could I also indicate that I'll be seeking your leave perhaps early next week not to be present for the balance of the week, if not the following week.

10 PRESIDENT: Subject always of course to things not happening adverse to your client.

15 LTCOL GREEN: As I said, he's been kind enough to give us a briefing as to what he proposes the evidence to lead. I don't anticipate I'll need to be here second half of next week and the following week.

PRESIDENT: I'm comfortable with that.

20 LTCOL GREEN: I'll indicate that a little bit closer to the event, but I thought I'd just highlight it now.

PRESIDENT: Thank you.

25 COL GRIFFIN: Thank you, sir. I'm obliged to LTCOL Green, and I will, as far as possible, forecast to him any changes to that forecast plan. Unless there's anything else, sir, I propose that we resume in open session to complete the evidence-in-chief of Detective Inspector Hoffman.

PRESIDENT: Please do.

30 <DETECTIVE INSPECTOR WAYNE WALTER HOFFMAN,
recalled on former oath [1345]

35 <EXAMINATION BY COL GRIFFIN, continuing

40 COL GRIFFIN: Detective Inspector Hoffman, we return now to the resume that you prepared which is headed "Physical Evidence Indicators for Fatal Self-Inflicted Gunshot Wound in the Matter of PTE Kovco". Would you take the Board through the document in your own time, please?---Yes. This document was prepared by me and it contains an opinion, a summary opinion at the end. This document was compiled over - based on my experience of crime scenes over 20 years, plus two forensic reference books which I would like to indicate. One is called,
45 which I have here today, "Gunshot Wounds Practical Aspects of Firearms,

Ballistics and Forensic Techniques” by Vincent Di Maio. Dr Di Maio is well-renowned in his field overseas in America. He’s a medical examiner and he’s written this classic forensic textbook on ballistics and crime scenes. The other book is called “Medicolegal Investigation of Gunshot Wounds”. This is by Abdullah Fatteh, a professor in America, who is also an expert in his field on gunshot wounds. The original copies I’ve brought - sorry, the original books I’ve brought along today which I’ll be referring to. Where I refer to these books I’ve provided the hearing with photocopies of the extracts from those books.

Thank you?---To start off with on indicator number 1, the deceased used his own service issued firearm and no other firearm. The fired cartridge case recovered from the breach of the handgun and the bullet recovered from the roof of the room were positively identified to that same handgun. In reference see expert’s certificate of positive identification by Sergeant Snow. This I have found is commonly preferred as the shooter is more comfortable with using their own firearm only than someone else’s firearm. Indicator 2, the deceased had ready access to his own service issued firearm at the time of the incident. The handgun was in its holster hung from his double bunk bed within easy reach. This is as confirmed by eyewitness accounts. Indicator 3, the firearm was not only loaded, but ready to fire of a live round in the chamber. The handgun did not necessitate the action of loading a round from the magazine into the chamber by racking and pulling the slide to the rear and releasing the slide forward before being able to discharge. The firearm was instantaneously ready to fire at a moment’s notice, preventing any interference by any person or persons present at the time who may and try to prevent. This is confirmed - as confirmed I hope by eyewitness accounts. Indicator 4, the incident occurred in the presence and company of other persons, workmates, which does not preclude the incident from being one of a self-inflicted injury. Self-inflicted shootings do not occur only in private. See supporting documentation. If I refer to the first book by Dr Di Maio on page number 298. Dr Di Maio states:

Most people who shoot themselves do so in private. Exceptions are numerous. However, individuals have shot themselves in front of friends, spouses, relatives and even crowds. The place chosen for the suicide may be quite bizarre.

I now refer to copy of page number 157 of the reference book of Mr Fatteh. It goes on to say:

Hence, most of the suicides are unwitnessed. However, this is no always so. In a fit of depression a person may take his own life in the presence of another person.

Indicator 5, the deceased's head was the target that was struck and not another part of his body. The head is a preferred location in the vast majority of self-inflicted gunshot incidents involving not only handguns but also long arms. See supporting documentation a copy of page numbers 294, 296 and 297 of Di Maio where Di Maio states:

The location of the self-inflicted wound varies depending on the type of the weapon, the sex of the victim and whether the victim is right or left handed. In individuals who shoot themselves with handguns the most common sites for the entrance wounds are the head, chest and abdomen, in that order. Thus, in a study by Cohle 79 per cent of all wounds were in the head, 18 per cent in the chest and 3 per cent in the abdomen. A study by Eisel et al showed similar findings.

On page 296 of Di Maio he states:

In suicides with rifles and shotguns, just as with handguns, the preferred sites are the head, chest and abdomen, in that order.

On page 297 of Di Maio he states:

However, irrespective of sex, the percentage of people shooting themselves in the head with shotguns is not as great as with handguns.

On that same fifth indicator I will then go to Fatteh on page number 162 where he states:

Suicide. Location of suicide wounds on the body. Suicide victims elect classical sites. Based on the results of study of 844 suicides, the sites chosen to inflict suicide or gunshot wounds in order of frequency are the temple area, right temple by right-handed persons, and left temple by left-handed persons, heart area, mouth and the centre of the forehead.

Indicator number 6, the choice of a person's head as a target indicates an intention for a fatal wound. Persons who shoot themselves but intend to survive will select other parts of their bodies such as their extremities, that is, hands, arms, feet, legs and side of the stomach region, but not the head region which has an extremely high rate of fatality. This is a strong indicator as it rare to survive a gunshot head wound and is a preferred location for suicide. I have actually, to further that, done - attended woundings where people have shot themselves and intended to survive

and they've shot themselves in the side of the stomach, through the forearm and other extremities. Indicator 7, the distance of the muzzle end of the barrel to the wound to the side of the head was in close proximity at time of discharge. Self-inflicted wounds are usually in close contact
5 proximity. This is a preferred distance to ensure the bullet does not miss its intended target and is a strong indicator for a self-inflicted gunshot wound. See supporting documentation copy of page number 161 of Fatteh. I'll go to 161.

10 *Range of fire. Self-inflicted wounds are usually contact or close range wounds, therefore the flame, smoke and gunpowder effects are seen in most cases. Only in rare instances is a shot not fired from contact range.*

15 Indicator number 8:

*The right side of the head region of the deceased was the preferred side for the entry wound which supports a right-handed shooter operating the firearm, this is the preferred location, that
20 is the same side as the main firing hand and is an indicator for a self inflicted gunshot wound.*

See supporting documentation copy of page 294 of Di Maio where he states:
25

*In the head, the most common site for handgun entrance wound is the temple, although most right-handed individuals shoot themselves in the right temple and left-handed individuals in the
30 left temple. This pattern however is not absolute.*

Further to that, copy of page 162 of Fatteh, I'll go to that. Where Fatteh, under the heading Location of Suicidal Wounds on a Body, states:

35 *Suicide victims elect classical sites.*

And he then talks about the temple area by right-handed persons and the left temple by left-handed persons, then, as I repeated before, heart area, mouth and the centre heart area, mouth and centre of the forehead. Indicator number 9:

40 *The wound location at the side of the head was at the front of the right ear. This is a preferred common location and an indicator for a self inflicted gunshot wound.*

45 See supporting documentation copy of page 163 and copy of page 161

5 which illustrates figure 11-14 caption: A suicidal Gunshot Wound at a Classical Site. And I would like to refer to the colour photograph which I do not know if it has been tendered previously from the post-mortem photographs, but I supplied it to Col Griffin this morning which is a photograph taken from the post-mortem of PTE Kovco showing the entrance wound and I would draw reference to page 161 of Fatteh's book where he has a photograph - - -

10 Inspector, I'll just interrupt you and I'll distribute now copies of the photograph that you're referring to and to the page and cover sheet of the particular article to which you refer for Counsel Representing and for the Board.

15 LTCOL HOLLES: Sir, might I ask if it's intended to distribute also copies of the material from which the witness is reading. It will be impossible to cross-examine on this material unless such material is available to the Bar table.

20 PRESIDENT: Well certainly we need to distribute this sort of information as quickly as it becomes available. But that said, if you find yourself at a disadvantage, we'll defer cross-examination for a little time.

25 LTCOL Holles, if your clients feel under some stress because of what's happening at the moment, they certainly have my leave to leave us at any time they feel the need.

MRS J KOVCO: No, I need to sit and listen to all of this, it's too much.

30 LTCOL HOLLES: Thank you, sir.

MRS J KOVCO: It's bloody keystone cops, may be I should go right now.

35 PRESIDENT: Yes, thank you Colonel.

40 COL GRIFFIN: Yes, thank you Inspector, would you continue with the reference to the documents please?--Yes. With the distribution of the colour photograph on the post-mortem, I would like to draw attention to page 161 which shows a black and white photograph, caption A Suicidal Gunshot Wound At A Classical Site and draw everyone's attention to the exact location of that wound to the photograph of PTE Kovco to the photograph in the forensic reference book.

45 And the points you're drawing attention to is the position relative to the ear, the entry wound in respect of the one suffered by PTE Kovco and the

document in the textbook to which you refer?---Yes, that is correct and I don't draw reference to the exterior of the wound, nor the gunshot residue and other details around the wound, but the wound itself and it's exact location in relation to the ear.

5

Please continue?---Indicator number 10:

10 *The passage angle of the bullet through the head of the deceased approximates the holding position of the operator of that handgun. This is an indicator for a self inflicted gunshot wound.*

See supporting documentation copy of page 162 of Fattah where he states:

15 *The investigator should try to evaluate the direction of fire with reference to the gun involved to see if the course of the bullet within the body is consistent with suicidal infliction of the wound.*

Indicator number 11:

20 *The recovery of the fired cartridge case in the breach of the handgun in the so called stovepipe position. This is a typical malfunction of a self loading pistol recoil operated firearm which has failed to cycle properly due to the so called slack handgrip of the operator, that is, not firm enough grip of the handgun during the firing cycle stages of extraction and ejection of the cartridge case. This is an indicator for a self inflicted gunshot wound indicating that the operator was at some stage in control of that handgun at the moment of discharge, but not further in control during the remaining cycling operating of the handgun during the resulting extraction and ejection stages of the fired cartridge case.*

25

30

In relation to that, I would draw attention to the supporting documentation which is a copy of page numbers 209 to 210 of the reference book titled Shooting Incident Reconstruction by Lucien Haag. On page 209 under Additional Conditional Considerations he states:

35

40 *To cycle properly, recoil operated guns need to be held with a reasonably firm grasp during the discharge process, the slide and barrel recoil and move rearward together for a short distance and subsequently unlock while the frame is secured in the hands of the shooter. A poor or loose grip on some recoil operated pistols can affect the extraction and ejection process to the point of a stoppage or jam. A very loose grip can altogether prevent the casing from being extracted from the chamber in some pistols.*

45

Although it might seem unlikely that anyone would hold and fire a gun with such a hold, it may be necessary to evaluate this potential variable in certain cases.

5 Further to indicator 11, copy of page numbers 17 and 32 of Official New South Wales Police document titled Glock Self Loading Pistols Instruction Manual. Page 17 he discusses the topic, the heading is Grip Strength and it states:

10 *While it is possible to hold a revolver loosely and the weapon will still function without difficulty, a pistol must be held firmly in order to ensure reliable functioning. If the pistol is held loosely, then some of the energy required to operate the slide is absorbed by the pistol recoiling back into the hand. This can result in the*
15 *slide not travelling fully to the rear before returning forward with the result being the stove pipe malfunction referred to in the section dealing with stoppages.*

And on page 32 under Stoppages, it states:

20 *Failure to extract, eject or feed or a combination of these factors referred to as secondary stoppage, these stoppages are caused by disruption of the pistol functioning and generally involves a fired cartridge case and live round of ammunition trapped in the*
25 *ejection port area. A fired cartridge case trapped vertically within the injection port is commonly referred to as a stove pipe stoppage.*

Indicator 12:

30 *The handgun was forensically examined and underwent testing for accidental discharge. The handgun was in working order and was not prone to accidental discharge passing the official safety testing requirements for firearms standard utilised by Australian*
35 *Customs. This is a strong indicator that the handgun discharged only with direct sustained pressure applied to the trigger located inside the trigger guard of the handgun by the operator.*

40 See supporting documentation, copy of Customs (Prohibited Imports) Regulations 1956, Regulation 4F, Part 3, Safety Requirements for Firearms for Complete Safety Testing Procedures which were conducted which I won't produce again or refer to because I already covered it in my previous evidence.

45 *In summary, based on the abovementioned indicators only, I am*

of the opinion that the fatal shooting of PTE Kovco was a self inflicted gunshot fatality. This self inflicted shooting incident however could have been either intentional or unintentional in its nature.

5

When you say "either intentional or unintentional", do I understand you to be saying there that in your opinion PTE Kovco deliberately fired the action, but may have been without knowledge that it was in fact a loaded or that he intended to actually shoot himself?---What I'm saying is that there is strong indicators for the person self inflicting and doing that injury to themselves with full knowledge of what they were doing, or they could have possibly put themselves in all those classic indicators of a self inflicted incident to happen without meaning that to happen, but had inadvertently applied pressure to the trigger without their realisation.

15

I understand from that that you are unable to say one way or the other?---No, I cannot.

20

Or indeed to express an opinion one way or the other?---That is correct.

Mr President, Detective Inspector Hoffman has currently produced and handed to me two copies of each of the relevant authorities that he's just referred to which we can have reproduced now to assist counsel in their examination that they may wish to raise with him and it may be useful to take a short adjournment to have one of those two copies reproduced, counsel can familiarise themselves with the document and then have the opportunity to question, unless there is any questioning that wants to be done at this point.

30 PRESIDENT: I think people might like to see the documentation first.

LTCOL HOLLES: Yes.

35 COL GRIFFIN: And of course the original text are present for comparison purposes as required.

PRESIDENT: Very well then.

40 **ADJOURNED** [1407]

RESUMED [1453]

45

PRESIDENT: Thank you, ladies and gentlemen. Are you ready to proceed?

5 COL GRIFFIN: Those documents were distributed to Counsel Representing to assist them in any questioning they may have, Mr President. I understand that they're now ready to proceed.

PRESIDENT: Thank you. LTCOL Green.

10 LTCOL GREEN: Nothing, thank you, sir.

PRESIDENT: LTCOL Holles.

15 LTCOL HOLLES: Sir, I'm making an application for an adjournment, at least for the rest of the day. The statement prepared by this witness which is now in tender advances a number of opinions. He has quoted extensively from a number of publications, the predominant one being the Medicolegal Investigation of Gunshot Wounds by one Abdullah Fatteh or something like that. I have no idea which date the particular book was
20 published and I've certainly had little opportunity to check the prominence of that author.

The other one is by a Vincent Di Maio. It's published in 1985, at least the copy extract of which I've been provided. They raise fundamental issues
25 as to the manner in which this witness has proffered opinions as to causation. In effect this witness gainsays what was said by Dr Duflou on Monday. There are considerable differences between the rate of suicide by gunshot wound in America and Australia. There are a number of other issues in relation to the assumptions made in the document itself which
30 could be related back to the books which the witness has prayed in support of his hypotheses.

In effect, he has moved outside his own area of expertise into an area of expertise perhaps more comfortably left to a forensic pathologist and in
35 doing so has quoted at length from the two books I've referred to. As I understand his qualifications, he has no qualifications in psychiatry or forensic pathology. He seeks to rely upon authors who would appear to have qualifications in forensic pathology.

40 I'm instructed to apply for sufficient time to research both the authors and can perhaps use other published authors which don't necessarily support what those authors do say. I'm not asking for more than an overnight adjournment, but this document having gone in, my position is I should be able to cross-examine on it properly and thoroughly and with adequate
45 time to research the issues which have been raised by the witness and by

the authors he has quoted. Thank you, sir.

PRESIDENT: Thank you. Any other application?

5 LTCOL BERKLEY: Yes, sir, I support my learned friend. Just in the
normal course of events if previously unavailable technical material is
brought and it's material upon which an opinion is based, just in the
normal course of events Counsel before cross-examining would be able to
10 at least examine the material, but also see what other material is in the
combined annals of the knowledge banks. I just haven't got the time. I
can't do it sitting in here. I'd support my friend. I'd like at least to get
that overnight, do some research of my own through my search engines
and go from there. So I'd support my friend and my client wouldn't want
me cross-examining without at least bombing up, so to speak, from what
15 available knowledge there is.

PRESIDENT: COL Young.

20 COL YOUNG: I support those applications, sir. I'd appreciate some time
overnight to consider the content of the statement that's gone into
evidence.

PRESIDENT: Any comment from Counsel Assisting?

25 COL GRIFFIN: Sir, only to indicate that, as I understand it, the author of
Medicolegal Investigation of Gunshot Wounds, the gentleman's name is
not Fatwah, it's Fattah. You may wish to hear from Detective Inspector
Hoffman why he chose these particular documents. You may wish to hear
that now or at a future time when he is made available, if you so choose
30 for him to give that evidence at that time. That may assist Counsel
Representing in their inquiries tonight.

PRESIDENT: We might ask him that very question; why do you focus on
these particular two authors?---Sir, basic reason is there are not that many
35 forensic reference books written on this particular field. These two here
are the main reference points that we use in the lab and which other
members of the Defence have also used in courts of law throughout
Australia.

40 Does the body of knowledge, if I can put it that way, tend to come from
America?---Yes, it does, sir, who tend to have the most shooting incidents.

I sort of guessed that. I'm minded to grant the adjournment to allow all -
is this witness available to us tomorrow?
45

COL GRIFFIN: Yes, sir.

5 PRESIDENT: Thank you. I suggest, Colonel, if we can stand the witness down. Is it possible then for us to hear from the other weapons expert that you've got in train?

10 COL GRIFFIN: What I do propose to do, sir, is to recall Mr van der Walt who in the break has drawn some material to my attention and I propose to call him to tell us about that material that he's identified.

PRESIDENT: Unless anybody's got any objection, I propose to stand this witness down and invite him to rejoin us tomorrow. In the meantime we'll hear from Mr van der Walt.

15 COL GRIFFIN: Thank you, sir.

PRESIDENT: Everybody comfortable with that approach.

20 COUNSEL REPRESENTING: Yes.

<WITNESS WITHDREW [1500]

25 COL GRIFFIN: I call Mr van der Walt.

<LUCAS CORNELIS van der WALT, recalled on former oath[1500]

30 **<EXAMINATION BY COL GRIFFIN**

35 COL GRIFFIN: Now, Mr van der Walt, it's correct, isn't it, that during the adjournment you approached me to draw to my attention a document from your files which you identified as a result of thinking about one of the questions that one of the Counsel put to you in cross-examination about the serial numbers appearing on various parts of the pistol. Is that right?---That is correct.

40 Have you produced a document in support of your reconsideration of that?---I have a document in front of me that I can produce. I have not produced the document thus far.

45 Would you tell the Board what it is, please?---I was asked numerous

5 questions regarding the interchangeability of the different parts of the
firearm, the frames and the slide and the barrel. I referred to
Sergeant Snow's notes to try and establish where the serial number of the
firearm occur. While testifying I had a quick look and I did not examine
10 this firearm myself. So I didn't have the opportunity to look at this. And
I saw that he noted that the serial number appears on the slide and the
frame. But I have looked at his notes more detailed and I've since
discovered that the serial number also appears on the barrel of the firearm
or on the chamber of the barrel of the firearm. So the serial number
15 appears on the frame, the slide, as well as the barrel. So the
interchangeability theory basically goes out the door.

Is it the case that you also in my presence took the exhibit bag with the
exhibit pistol and attempted to look at the pistol through the bag but could
15 not do so?---Yes.

Is it the case that you in consultation with Inspector Hayes have come to
the conclusion that it is forensically acceptable for you to open that exhibit
20 bag in this hearing room this afternoon and examine the pistol to satisfy
yourself that Detective Sergeant Snow's notes are accurate or otherwise as
to the presence of those different pieces of the weapon with the serial
number?---That is correct.

And are you in a position to do that now if I provide the exhibit to you?
25 ---I am.

Could I ask - - -

PRESIDENT: Just before we do that, we can do that without
30 compromising the potential for extra DNA testing?

COL GRIFFIN: I understand that Mr van der Walt has discussed that
very thing with Inspector Hayes and they are satisfied that the pistol itself
has been thoroughly examined for the DNA and that any other testing will
35 simply relate to those tests.

PRESIDENT: To the information they've already got?

COL GRIFFIN: Correct. But could you confirm that just Mr van der
40 Walt?---I can. As a precautionary measure because we don't know what
the day of tomorrow holds, if I can be supplied with gloves, that would
be - - -

We've obtained some disposal gloves and they are here sir and I would
45 now invite the Secretary to produce that exhibit to Mr van der Walt with

the gloves so that he can undertake that examination.

PRESIDENT: Yes, thank you.

5 COL GRIFFIN: We'll just obtain an implement for you to break the seal on the exhibit bag Mr van der Walt while you don those gloves.

10 COL YOUNG: Mr President, I wonder if, for the record, the number of the exhibit might be - I just don't recall what the number of the exhibit was, whether that might be mentioned on the record.

PRESIDENT: Eighty-three.

15 COL YOUNG: I have 83 as the paper bag.

COL GRIFFIN: Eighty-two is the pistol.

COL YOUNG: Thank you.

20 WITNESS: The firearm is safe. I can now confirm that the serial number as indicated by Sergeant Snow which reads 245MY06578 do appear on the frame, the slide as well as the barrel.

25 COL GRIFFIN: And Mr van der Walt, did I understand you to say earlier that as a consequence of that, the interchangeability theory, I think your words were, goes out the window?---That is correct.

Thank you Mr van der Walt, I don't have any further questions.

30 PRESIDENT: Does any Counsel Representing wish to inspect the pistol, obviously your looking over the should of the officer, rather than handling it yourselves?

35 LTCOL HOLLES: I'd like to ask the officer some questions.

PRESIDENT: I was getting to that, but very well. LTCOL Holles?

40 <EXAMINATION BY LTCOL HOLLES [1507]

LTCOL HOLLES: Mr van der Walt, can you remove the slide please? Thank you, that took you a matter of what, two and a half seconds?---I wasn't counting, but approximately yes.

45

Now, would you have a look at the slide please? The slide contains all of the working parts necessary to discharge and eject a round, does it not?
---That is correct.

5 That slide can be replaced by another slide from another weapon in a matter of seconds?---Yes.

10 If the slide from weapon A was placed on weapon B and discharged and then replaced on weapon A, would it not be the situation that a forensic examiner given the choice of picking weapon A or weapon B as the weapon which discharged a particular round would pick weapon A because the metal parts which impart the particular characteristics to the round and the expended cartridge case - projectile and expended cartridge case are all contained in the slide?---That is correct.

15 So is it not the case that the fact that the slides are interchangeable between frames does not preclude the possibility at least that you tested not the weapon that fired the fatal shot, but simply the slide and barrel that fired the fatal shot?---That is correct, but we have to assume because that is the majority of the firing part except for the magazine and the hammer, the magazine will leave marks as well and the magazine thus far hasn't been compared. But the majority of the firing process happens inside the barrel and the slide which is fitted to the frame of the firearm and when I talk about the firearm, I talk about the frame, the slider and the barrel as a whole.

20 Yes, I appreciate that. My point is simply this, that it is a matter of seconds to change frames which will give you a result which may mean that in fact a round is fired from one weapon, but in fact the frame used to fire the weapon was another weapon?---It was just a different frame. It wasn't necessarily a different firearm.

35 I appreciate that, but the effect of that is that the round that you examined has marks on it which have come exclusively if not predominantly - predominantly but not exclusively I should say from parts contained within the frame, rather than parts contained - I withdraw that, parts contained in the slide, rather than parts contained within the frame?---That is correct, but in my experience because people know what parts of firearms transfer marks it is the habit of people to rather try and exchange firing pins, ejectors, extractors and barrels, but slides than just use another frame which doesn't leave any marks.

40 Have you ever struck a situation like this before?---That parts have been exchanged?

45

Yes?---I can't say that parts has been exchanged in these matters, but I have seen instances where parts have been exchanged, yes.

5 Have you struck a situation where you've got two identical weapons within the same room with interchangeable slides?---Numerous times.

Have you struck a situation where there has been an exchange?---I have.

10 Thank you. Nothing further.

PRESIDENT: LTCOL Berkley.

15 LTCOL BERKLEY: I've got no further questions of the witness. Thank you, sir.

COL YOUNG: Nothing from me, thanks, sir.

20 <EXAMINATION BY COL GRIFFIN

[1513]

20

25 COL GRIFFIN: Just to close that point, I take it from what you're saying that that would require somebody to have deliberately set out to have exchanged the top half of that weapon for another half of the weapon, fired the weapon, then stripped it, placed the original back on and the phantom one, if you like, back on its original?---That's correct.

30 Some planning before the event rather than just swapping them over after it was fired?---Yes, but the thing is this slide and barrel belongs to this frame. So if anyone were to change this slide and barrel and fit it on a different frame and use that frame to discharge the shot, it was just a different frame that was used. It was still this slide and barrel that's responsible for discharging the fired cartridge case and the bullet. I can't see the logic of only changing a frame which leaves no marks.

35

40 I see the point you're making. So do you say that - and if you accept from me for a moment that there is a record to show that weapon with that serial number was issued to PTE Kovco - it would require somebody to take the slide off PTE Kovco's weapon, place it on their own weapon on the frame?---That's it.

Fire the round, then remove it, place it back on PTE Kovco's frame and restore their own frame?---That is correct.

45 Thank you.

LTCOL HOLLES: Sir, might I ask a supplementary question to that?

PRESIDENT: Yes, certainly.

5

<EXAMINATION BY LTCOL HOLLES

[1515]

10 LTCOL HOLLES: Of course if that were to occur, the person who did
that they would - or there possibly might be DNA on the trigger of the
frame?---DNA on a firearm gets transferred - your last worry about DNA
when taking slides and barrels are the trigger because, like everybody saw
15 when I took the firearm apart, I actually handled the slide more than I
handled the trigger, or I don't handle the trigger at all. So the DNA I'd
expect to be found on the working parts, which is the slide and the barrel
as well.

20 Fine, but if the weapon was discharged, then the DNA would be on the
trigger, would it not?---If the weapon - if a different frame was used to
discharge a shot, the DNA would be on that firearm.

Thank you. Nothing further.

25 COL CHARLES: Why would he need to go to all that trouble? If you
wanted to shoot PTE Kovco with his own gun, would you not exchange
the guns beforehand? If there was a conspiracy at all and if somebody
wanted to shoot him, then they could just exchange his gun for theirs
which he possibly would not notice if you don't look at the number or the
30 gun that you have - use the gun and then exchange it. That would be
quicker?---That's right. If somebody would want to shoot him and
exchange parts it would make more sense to put somebody else's barrel
on the firearm that you are about to use and use that barrel and then shoot
and then put that barrel on somebody else's firearm that you want to
35 blame this occurrence on and not yourself.

But why not just change the whole weapon? You've said the actual
handle/grip is accessible - - -?---The frame?

40 The frame doesn't leave any distinguishing marks---That's right, but
if - - -

So there's no point in changing it?---There's no point of changing it.

45 That's right. Just change the weapons?---That's right. If one wants to

hide ballistic evidence one has to start changing barrels and a different barrel to a different slide or a different firing pin to a different ejector, et cetera. There's not much use just changing the top part and using your own frame.

5

PRESIDENT: Anything arising out of that, gentlemen?

COUNSEL REPRESENTING: No.

10 COL GRIFFIN: Thank you, sir.

PRESIDENT: Thank you, sir. You might like to reassemble the weapon and return it to the secretary.

15 COL GRIFFIN: I wonder if the notes of Detective Sergeant Snow that have now been produced should go into evidence since they've been referred to as a further exhibit that Mr van der Walt has prepared.

20 PRESIDENT: Very well. Perhaps they might be shown to Counsel Representing and we'll have that discussion.

COL GRIFFIN: Mr van der Walt, is it sufficient for your purposes if we simply sealed that plastic bag with another sealing tape as was originally on there?---That would be sufficient.

25

Again for your purposes, if these notes of Detective Sergeant Snow go into evidence, would a photocopy returned to you for your file records be sufficient?---The note that I've just produced can be kept at Court. The original is still in the brief folder.

30

PRESIDENT: No objection to the tender of that report from - - -

COUNSEL REPRESENTING: No, sir.

35 PRESIDENT: It can be marked as Exhibit 93.

#EXHIBIT 93 - NOTES OF DETECTIVE SERGEANT SNOW

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COL GRIFFIN: May Mr van der Walt be excused?

PRESIDENT: Yes. Thank you, you may stand down.

45

PRESIDENT: Your next witness, if possible, Colonel.

5

COL GRIFFIN: Sir, we have a considerable volume of imagery to show the Board. You will recall references from Soldier 19 to closed circuit television video footage from the security cameras at the Embassy. We have obtained that material and considerable other volumes of material, all of which is classified. I propose to play that imagery to you commencing either this afternoon or tomorrow. However, as well as the preparation that Counsel need time to do for the recalling of Detective Inspector Hoffman, there is as well the weapons experts that we've referred to and I propose to put that evidence before you tomorrow.

15

Counsel undoubtedly will want time to talk to those experts as well. I note the time and therefore the remainder of the day may better be utilised, in my respectful submission, to provide those witnesses now to Counsel Representing to speak to them about the substance of the doctrine and evidence they're to produce, also to familiarise themselves with the imagery - most of which they saw last Friday - and furthermore to undertake the research that at least two have indicated - three, I believe - that they wish to undertake before Inspector Hoffman returns.

20

25

I'm conscious of delay for your purposes, sir, and it may be better that time is utilised this afternoon in conducting all of those activities and tomorrow morning. But, in any event, all of that evidence, except for the recalling of Inspector Hoffman, will need to be conducted in closed session.

30

PRESIDENT: Yes, very well. There are, of course, Friday afternoon - the inevitable administrative arrangements and difficulties. Would it be convenient to everybody if we started a little earlier tomorrow, 9 o'clock, perhaps, subject not to causing any inconvenience to the family.

35

COL GRIFFIN: Not before 9 o'clock would be suitable from my perspective, sir, and I trust will provide time for Counsel Representing
- - -

40

PRESIDENT: I don't know whether LTCOL Berkley and LTCOL Holles' clients are comfortable with that?

LTCOL HOLLES: Prefer 9.30, sir, if it's possible.

45

LTCOL BERKLEY: Yes, that's acceptable to us.

PRESIDENT: Spirit of compromise, Colonel, 9.30. 9.30 then.

5 COL GRIFFIN: Sir, I wonder if it would be possible - and I appreciate that Counsel may not be in a position to indicate at this point in time whether they would be happy to resume with Detective Inspector Hoffman in the morning or not, as the case may be, rather than inconveniencing his other important duties to attend to.

10 LTCOL HOLLES: From my part, I believe I could do it tomorrow morning at 9.30.

LTCOL BERKLEY: I haven't commenced research yet, sir, so I can't answer that.

15 PRESIDENT: I think we're going to have to try very hard, Colonel, because I'm very conscious of the police time we're taking up and I think we should try to avoid taking up more time than we need.

20 LTCOL BERKLEY: Indeed, sir.

PRESIDENT: Very well, 9.30 tomorrow morning.

25 COL GRIFFIN: With Inspector Hoffman, sir?

PRESIDENT: With Inspector Hoffman.

COL GRIFFIN: Thank you very much.

30 **MATTER ADJOURNED AT 1524 UNTIL
FRIDAY 21 JULY 2006 AT 0930**